THE

Stile of Exchanges

Containing both their

Law & Custom

As practis'd now in the most considerable places of *Exchange* in *Europe*.

Unfolding divers

MYSTERIES,

AND

Directing every Person, howsoever concerned in a *Bill of Exchange*, to what he ought to do and observe, in any case, in order to his own security.

Translated out of Low & High-Dutch, French *and* Italian Latine *Authors.*

The whole being Methodically digested into *Chapters* and *Sections*, that by the help of an *Index* any particular Case may readily be found.

By *John Scarlett*,
Merchant of the Eastland *Company*,

The Second Edition.

LONDON:
Printed by *John Brinchurst*, for *Thomas Malthus* at the *Sun* in the *Poultry*, 1684.

FH
MVSEVM
BRITANNICVM

ERRATA.

SOme Faults have eſcaped the Preſs by reaſon of the Author's remote Abſence from *London*; which the Reader is deſired to Correct; ſome of them are here inſerted, *viz.*

Preface page 3. line 9. for *obſerve* read *obſcure*. Pref. p. 6. l. 27. f. *Mala* r. *Mali*. Pref. p. 9. l. 8. f. *Vulter* r. *Vultur*. In the Book p. 98. l. 18. f. *Leſſabon* r. *Liſbonne*: And where the word *Broger* is, read *Brocker*.

THE

THE Epiſtle Dedicatory.

SEreniſſimo & Potentiſſimo, Principi et Domino. Domino friderico-Wilhelmo Marchioni Brandenburgico, ſacri Romani imperji Archicamerario & Principi Electori, Magdeburgi, Pruſſiæ, Stetini, Pomeraniæ, juliæ Cliviæ, Montium, Caſſubiæ & Vandalorum, in Sileſia quoque, Croſnæ et Carniolæ duci; Burgravio Nurenbergæ, Principi Rugiæ Halberſtadji & Mindæ, comiti Marcæ & Ravenſbergi, domino in Ravenſtein,

Summo

Summo Religionis Reformatæ
Patrono,
Maximo gentis Teutonicæ Marti.
Nec non
Mercaturæ tam Maritimæ quam
Terrestris,
Promotori Illustrissimo.

Hunc de Cambjis Tractatum ut obsequii gratitudinisque Symbolum, devotissimo animi cultu dat, dicat dedicatque

Johannes Scarlett,

Anglo-Brittannus, Societatis Balthicæ Mercatorum Anglorum Socjus, Regiomonti in Prussia Residens.

THE

THE PREFACE.

GReat are the Mysteries of Merchants Trading to Forreign Parts; nor was ever any one Merchant capable of understanding all the Mysteries of every Foreign Trade; whence it comes, that there are so many several Species (as I may call them) of Merchants, as Spanish, French, &c. but there are very few Merchants that have not something to do with Exchanges, either Forreign or Domestick; and yet of all those that practise Exchanges, how few are they that rightly understand it! as appears by the multitudes that ignorance of the nature hereof, of the Rules and Laws hereof, hath undone: This to many, if not to most Merchants, remains a Mystery, and is indeed the greatest and weightiest Mystery that is to be found in the whole Map of Trade. On this consideration, for the Information of Young Men especially, I thought my self obliged to translate this piece, which contains the Practick part of Exchanges, and as they are regulated and practised at the greatest Banks for Exchanges, and the greatest Place of Traffick in Europ: If there be any thing in

Merchandize that requires circumſpection, knowledge *and* prudence, *here it is; herein Merchants muſt be critical.*

To every Chapter I have added what Marius *his advice is in this matter; beſides that, many notable things are tranſcribed out of* Latin, German *and* Italian *Authors, of all whoſe large Books of Caſes, this may be called a* Compendium.

I may perhaps be judged very preſumptious in attempting to unfold the Myſtery of Exchanges, *then which the whole courſe of Traffick hath nothing more intricate. But I ſhall for my excuſe ſay no more than this, That I only tread in the ſteps of thoſe that have wanted no opportunities to learn and know the* Practick, *as well as* Theory *thereof; I have but collected what others have written in* Latine, French, Italian, High *and* Low-Dutch, *and made them to ſpeak in a Language that all Engliſh Merchants might underſtand; and this I think I may aſſert,* That the Authors neither wanted Experience to know the Practice, nor Learning to know the Laws thereof; *and I therefore hope, this ſmall Treatiſe will be of great advantage, and tend much to the unfolding of ſome of the* grand Myſteries of Exchanges.

None will deny, but that the knowledge thereof is as neceſſary *as it is* profitable, *and as* profitable *as* neceſſary, *and that to all that are concerned therein; not to* Merchants *and* Traders *only*

only, but to Lawyers, Attorneys, and others, who must mannage, plead and direct the Suits of Merchants about Exchanges, which they never can effectually do, unless they be well informed in the customs of Merchants; without this it will be almost impossible to discern between the justice and injustice, the equity and inequity of these Exchanges.

Intricate and observe, they are, if we respect either matter of Fact or matter of Law.

In respect of matter of Fact they are so, 1st, Because Merchants (if they may be called Merchants, or rather griping Usurers and Extortioners) daily study to make them difficult and obscure, to palliate their unlawful Usury.

2dly, Because many Fictions are practised and allowed of, and that both of persons and payments, and such as are not only paradoxical, but contradictory.

3dly, Because of the conciseness of the forms, and the couching of so many contracts and obligations into so few words that they are scarce discernable by moderate capacities.

4thly, Because of the variety of unheard of terms of Art, that neither the Law nor Lawyers do well understand, the knowledge whereof must be learned from the practice of Merchants, and not from Magna Charta, Justinian, Cooke or Littleton, &c.

And if in matter of Fact they be thus obscure, they must necessarily in matter of Law; for ex

facto jus oritur, *what a multitude of artifices* Usurers *have invented to palliate their Extortion, can scarce be imagined; they have puzled their* Pater Confessors, *and the greatest* Doctors of Divinity, *on the one hand to, salve their cases of Conscience; and on the other, the greatest* Doctors of the Law *to mannage their intricate Cases; nor indeed can they agree among themselves about the nature thereof; some will have Exchanging to be properly a* Bartering, *others a* Borrowing and Lending; *some will have it to be* Depositing; *others not knowing what to term it, call it,* Contractus Innominatus; *some will have it to be a* Changing of Monyes for Monyes; *others,* Contractus Locationis; *and some will have it to be a* Buying and Selling *properly; others again will assert, That* All these are included in it, and applicable to it; *and indeed, its not a pin matter whether it be all or any of these, if* commutative Justice *be but observed, nor shall I further trouble the Reader or my self with these Controversies.*

Nor with Disputes about the lawfulness *or* unlawfulness *thereof, wherewith I could have filled a large Volumn in Folio, if I would have translated what* Sigism. Scaccia *hath writ about this; I take it for granted, that its abused by* Usurers *and* Extortioners, *and even so far is utterly Unlawful. But this notwithstanding, the lawful use thereof, as its most frequently*

practised

practiſed among Merchants, is not to be abandoned; only by the way, let honeſt Merchants *here be cautioned,* That from the lawful uſe thereof they be not tempted inſenſibly to ſlide into the unlawful abuſe thereof, leſt of honeſt Merchants, they become griping Uſurers; *and this caution is ſo much the more neceſſary, in regard of the intricacy of Exchanges, and the difficulty of finding out the Knavery of an Exchange-contract; for as the* Spaniſh *Proverb is,* Area aperta juſtum ad peccandum invitat, *which is in plain* Engliſh, **Opportunity makes a Thief.**

Nor with the variety of diviſions *and* ſubdiviſions, *which divers Authors make, according to their own Conceptions, and the Idea thereof that they have framed to themſelves, as into* apparently Lawful *and* apparently Unlawful, *and ſome* Ambiguous, *ſome* Pure, *ſome* Impure, *ſome* Mixt, *ſome* Real, *ſome* Feigned, *ſome* Wet, *ſome* Dry; *all which Diviſions and Sub-diviſions tend more to the obſcuring and confounding the true nature of* Exchanges, *than to the unfolding of them; for from all its Qualities and Accidents, it is capable of* Diviſions, Subdiviſions *and* Diſtinctions, *wherefore I ſhall omit theſe nicities and curioſities, and only add this, That as of all Commerce, ſo alſo of this part thereof,* **Equity & commutative Juſtice muſt be the Baſis,** Æqualitas dati & accepti, *muſt be its Rule, and Honeſty muſt be*

the Artery under this vein of Commerce, without which Traffick cannot ſubſiſt, or elſe whatever Reaſons be urged for its lawfulneſs, and whatever Diſtinctions be uſed, it is unlawful, if not curia exteriori, *at leaſt* foro fori: *But alas! it is to be feared, that theſe things are little obſerved by thoſe who make it their ſole Trade to practiſe Exchanges. Not but that it is lawful for ſuch as give in Exchange, to conſider the lawful* Intereſt of their Monyes, *their* great Labour and Expences, *the* Riſco that they run, *the* plenty or ſcarcity of Monyes *or* Bills, *the* Intrinſick & Extrinſick value of the ſpecies of Monyes they muſt pay, *and again receive (which things, if not conſidered, there is no equality) but that which is condemned in Exchanges, (as was ſaid before) is the* Extortion and Oppreſſion, and the Abuſe of Exchanges, *palliating their* unlawful Uſury *therewith. So that whatever may be objected againſt the lawfulneſs hereof, may be retorted with this, that they are not* vitia artis, *but* artificis; *and let thoſe* Bankers *that thus abuſe a lawful calling, conſider, that uſually (as hath by ſome been obſerved) theſe great unlawful Gains have been attended with greater Loſſes, and it cannot well be otherwiſe; for firſt,* Mala parta, male & cito dilabuntur; *ſecondly, as the* Dutch *Proverb is,* As long as the Covetous man lives, the Deceiver need not dye for hunger; for the hopes of great Gains makes them

them run great Hazards; *and thirdly, their greateſt Trade being with (honeſt) Merchants, whom they credit, theſe often by divine Providence do ſuffer great loſſes, who often run great Riſco's at Sea, and ſo are made inſolvent, and if ſome griping* Uſurers *and* Abuſes *of the lawful calling and art of* Exchanges *are not concerned, it will be very ſtrange.*

That which gives moſt men an occaſion to diſlike and diſprove of this Myſtery *of the* Bankers, *is this,* 1ſt, *That they are obſerved to be men of* very broad Conſciences, *they will pretend Honeſty as much as any, but they exerciſe it as little; and eſpecially, its hard to perſwade them that they are in Conſcience obliged to remit part of their Debt to him that cannot poſſibly pay, who not by his own, but by others Knavery, not by his own Folly, but by the Providence of God hath ſuffered the loſs of all that he hath; and then,* 2dly, *They that are ſtrangers to this* Art *and* Myſtery *(for ſo it may well be called) cannot conceive how Moneys (which of its ſelf is barren) ſhould ſo fructifie, as if there were ſome* Alchymiſtrical cunning *uſed by them, or as if by Superfactation they could multiply Moneys; they think it ſtrange, that ſuch men, who in appearance are idle, do nothing but ſit and write, dealing in no Commodities, neither by buying nor ſelling, ſhould ſo ſuddainly acquire ſo vaſt Eſtates, and gain more than the moſt laborious and induſtrous Merchants: Nor,* 3dly, *can*

they underſtand how Monyes, that is the meaſure and price of all other things neceſſary for life, and which for that end only was invented, ſhould be the meaſure and price of it ſelf, and ſo be menſurans & menſuratum, regulans & regulatum, *and they judge it according to their Logical and Phyloſophical Capacities, that an* actio & paſſio *in the ſame ſubject is impoſſible.*

But theſe ſhould again conſider, to write is not to ſit ſtill, or to be idle; and to ſtudy, and contrive, and correſpond is the greateſt labour; as alſo, that it is only idle Monyes lockt up in a Cheſt, and unimployed, that is unfruitful and barren, and that there is a mixture of Contracts in Exchanges, and a buying and ſelling alſo, and that the profit thereof doth not ariſe only from the conſideration of time (though according to the longer or ſhorter time the courſe is higher or lower proportionably) but conjunctly from a conſideration of the Labour, Expences and Riſco of the Exchanges, nor do they alwayes gain by Exchanges, nor can they that obſerve the lawful Courſe of Exchanges know certainly that they ſhall gain; for poſito *that the men be able and ſufficient that they deal with; yet ſuch is the variableneſs of the Courſe, that till they have the Moneys in Caſh again, which they gave out on Exchange, they cannot know whether it be to their loſs or profit.*

But that which renders this Art of Exchanging moſt ſuſpected, is the Practice of Re-change, *which is doubleſs unlawful, and I ſhall not plead*

for

for it. *But leſt I be miſ-underſtood, I will declare what I mean by* Re-change, *and what others take it for; and the* Re-change *that is condemned, is this, When an* honeſt Merchant, *(or other) ſtanding in need of preſent Monyes, comes to an* Exchanger, *and offers him his Bill for ſo much Monyes; the Exchanger prying like a Vulter upon his neceſſity, gives him ſo much Monyes, upon good ſecurity, at an high Courſe, and knowing that the Bills will not be paid, but proteſted, he conditions, that the* Intereſt, Charges, *and the* courſe of Exchange *back again, ſhall be added to the Sum, and converted to the Capital or Principal; this augmented Sum is redrawn upon the poor neceſſitous Debtor; and if the Debtor cannot pay, then the Exchanger will probably continue it ſo long and ſo far as the Pledge or Security he hath, is worth, always augmenting the Sum, as before; all which at laſt he forceth the poor Merchant to pay him, though he utterly ruin him and his whole Family; whence by the way obſerve, That this* Re-change *is alwayes with the ſame Debtor, by converting the Intereſt into the Principal, and that the Creditor knows, that the Debtors Bills will not be paid, and that therefore many Fictions are admitted of, and that the Creditor doth by violence extort from the poor Debtor, whatever his inſatiable avarice ſhall prompt him to: And thus they cloak their Uſurous Contracts, and ruin the poor Debtor; and this is that* Rechange

that

that is unlawful. *But I ſhall not enlarge upon theſe things, leſt I ſwell the Book to too great a Volumn.*

I ſhall only here obſerve, That Exchanges were introduced by the Law of Nations *(as all* Commerce was*) and was invented for the eaſe in Traffick, and is now ſo neceſſary an Appendix thereto, that without it Trade can ſcarcely ſubſiſt, its the ſoul and life thereof, and is of the very Eſſence of all Commerce and Navigation. The* variety of Coyns, *and their* Extrinſick *and* Intrinſick Values *gave the occaſion thereof, and the deſign was to prevent the hazard and charges of tranſporting Monyes from place to place to traffique with. But now by the Policy of Merchants, its turned to a moſt profitable Trade, and its evident enough, that they are now neither Fools nor Prodigals that will for a ſmall piece of Paper or two, give away ſo much ready Monyes; for thoſe Bills of Exchange they receive do uſually bring all back again with Intereſt; yea, now according to the number of theſe Bills, men may ſafely value their Eſtates; To which purpoſe* Sigſm. Scaccia *tells a pretty ſtory:* "An *Italian* Merchant being in company "with ſome Scholars, they were diſcourſing "of a certain learned Perſon that was ſhortly "expected to come to a certain place, whom "highly commending for his learning, they "ſaid, he was *Omni literârum genere imbutus*; "of whom preſently the Merchant demands,

"*Quas*

" *Quas haberet Literas?* To whom they an-
" ſwered, *That he was ſo and ſo qualified, had*
" Greek *and* Latine *on his Fingers ends, &c.*
" Whereat the Merchant lift up his hands,
" and ſaid, *Is that all? What elſe ſhould he*
" *have?* ſays another. *Ho* (ſays the Mer-
" chant) *if he hath no Letters of Credit,* Literas
" Combij *(Bills of Exchange) all the reſt is of*
" *no value. But not to detain the* Reader *any longer here, and leave the Book to his peruſal and approbation, and I queſtion not, but thoſe that ſhall have occaſion to buy and peruſe it, will indeed find that its both uſeful and neceſſary for all* Merchants, *eſpecially for thoſe that are Young.*

John Scarlett.

AD-

ADVERTISENENT.

NB, What I have tranſlated for the moſt part *Remitter*, is by ſome called the *Deliverer*, in that he delivers Moneys.

And the *Poſſeſſor of the Bill* is he to whom the *Bill* is payable.

The *Acceptant* is he to whom its *directed*.

The *Drawer* is ſometimes called the *Taker*.

INDEX.

Chap. I. *The* definition *and* multiplicity *of* Exchanges, page 1.

Chap. II. *Of the* duty *of* Mackelers *or* Exchange-Brogers, p. 7.

Chap. III. *Of the* course *of* Exchange, p. 13.

Chap. IV. *Of the* reduction *of* Exchanges, p. 17.

Chap. V. *What a* Bill of Exchange *is, and what the* Drawer, *before the* delivery *thereof, and the* Remitter, *before the* receipt *thereof, must narrowly observe,* p. 22.

Chap. VI. *Of* placing Bills of Exchange to account, p. 30

Chap. VII. *Of* Letters of Advice, p. 40.

Chap. VIII. *Of the* payment *of the* value *by the* Remitter *to the* Drawer, p. 48

Chap. IX. *Of* negotiating, drawing in *or* endorsing of Bills *made payable to order,* p. 53.

Chap. X. *Of* demanding acceptance, p. 59.

Chap. XI. *Of* protesting *for* Non-acceptance, p. 71.

Chap. XII. *Of* acceptance *of Bills of Exchange* supra protest, p. 78.

Chap. XIII.

Chap. XIII. *What the* Poſſeſſor *of a* Bill of Exchange, *proteſted for Non-acceptance, and is not accepted* ſupra proteſt, *together with the* Drawer *and* Endorſer *are obliged to*, p. 88.

Chap. XIV. *Of the* time of payment of Exchanges, p. 96.

Chap. XV. *Of* demanding of payment, p. 105.

Chap. XVI. *Of the* payment of Bills *by the* Acceptant, p. 109.

Chap. XVII. *Of* proteſting of Bills *for* Non-payment, p. 121.

Chap. XVIII. *Of the* payment *of Bills* ſupra proteſt *for* Non-payment, p. 129.

Chap. XIX. *What the* Poſſeſſor of a Bill *proteſted for Non-payment, and not diſcharged* ſupra Proteſt, *hath further to do*, p. 138.

Chap. XX. *To what the* Drawer *and* Endorſers *of Bills returned with proteſt for Non-payment are further obliged to*, p. 142.

Chap. XXI. *What an* Acceptant of a Bill *that he hath ſuffered to be* proteſted for Non-payment, *and is returned with* proteſt, *is* obliged to. p. 148.

Chap. XXII. *Of* ſubſcribing *a ſecond or third Bill*, p. 152.

Chap. XXIII. *Of* Exchanging for account, *and in the* name of a third Perſon, p. 155.

Chap. XXIV. *Of* Bills of Exchange *drawn on* one

one place, *but payable in* another, p. 160.
Chap. XXV. *Of* Exchanges in Commiſſion, *in* general, *and of Bills drawn on* one place over another place, p. 169.
Chap. XXVI. *Of* Drawing in Commiſſion, p. 180.
Chap. XXVII. *Of* Remitting in Commiſſion, *and ſtanding* del credere, i. e. *being Surety therefore*, p. 188.
Chap. XXVIII. *Of being* drawn upon in commiſſion, p. 199.
Chap. XXIX. *Of being* remitted to in Commiſſion, p. 205.
Chap. XXX. *Of* Rechange, *and* continuance of Exchange *and* Rechange, p. 210.
Chap. XXXI. *Of* Exchanges to *and* from Fairs *in general*, p. 218.
Chap. XXXII. *Of* Exchanges *from* Amſterdam *to* Frankford *on the Main*, & vice verſa, p. 225.
Chap. XXXIII. *Of the* Leipzig *Fairs*, p. 231.
Chap. XXXIV. *Of the Fair of* Lyons *in* France, p. 233.
Chap. XXXV. *Of* Debt-Exchanges, p. 236.
Chap. XXXVI. *Of* diſcounted *or* reſcontred Exchanges, p. 241.
Chap. XXXVII. *Of* conditional Exchanges, *or* Bills *of* Bodomery, p. 250.
Chap. XXXVIII. *Of* Exchanges pro forma, p. 259.
Chap. XXXIX.

Chap. XXXIX. *Of* Dry-Exchanges, p. 266.
Chap. XL. *Of* Bills of Exchange being loſt, p. 270.
Chap. XLI. *Of* Letters of Credit, p. 288.
Chap. XLII. *Of what* is, *and* is not to be done; *or* what party *concerned in an* Exchange is, *and* is not obliged to do, *in caſe any that are concerned therein ſhould* fail, p. 293.
Chap. XLIII. *Some* ſelect Caſes *collected out of* Sigiſm. Scaccia *his Treatiſe* De Camvio & Commercijs, p. 323.
Chap. XLIV. *Of the* execution of Exchanges, p. 359.
Chap. XLV. *Of the* Par *of Exchanges*, p. 363.

THE

THE Stile of Exchanges.

Rules of Exchange.

CHAPTER I.

The Definition and Multiplicity thereof.

Rule I.

THE word EXCHANGE in its largeſt Signification, may be applyed to *any kind of Change.*

Rule II. In a more reſtrained and limitted ſenſe, it may be referred to *all ſorts of Traffique* whatever.

III. But that kind of *Exchange*, that here ſhall be treated of, is yet taken in a more limitted

mitted ſenſe, and only referred to a *Trading in, or with Monyes.*

IV. From the *variety of Coyns*, and the manifold *diſtinctions of Monyes* (thoſe Coyns and Allays, that are currant in one Nation, being not currant in another; and yet notwithſtanding, ſeeing almoſt all the *world* over, all Trade muſt be driven with Monyes) did this Trade of, and in Monyes (which we call EXCHANGE) derive its Original.

V. This *Exchange* is two-fold, *viz.* An Exchanging of Monyes for Monyes, one Coyn or ſort for another; and a giving of Money upon Exchange for a Bill, &c. The former of theſe is Petty Exchange, the latter Real.

VI. The Exchanging of one ſort or ſpecies for another, is alſo two-fold; either *with*, or *without Profit*.

VII. When its done *without Profit*, it cannot be called a *Trade*, but is done meerly out of Friendſhip, and as a Courteſie; and then there is an equal and juſt Valuation of both the ſorts of Coyn, according to their Allay, or their Price currant, or Intrinſick and Extrinſick Value.

VIII. But if *Profit* by the Exchange, be deſigned

deſigned by either Party, then one Party allows the other a certain *Profit* upon the certain Species he deſireth; and that *Profit* is called by the Italians *Aggio*, by the Dutch *Opgelt*, which we may call *Advance*, or *Uſe-Monyes*.

IX. But then, this laſt kind of *Exchange*, which is done for *Advance* or *Aggio*, is no free and lawful Trade, ſave to thoſe only that are permitted by Authority to uſe it, who are alſo obliged to obſerve certain *Rules* and *Methods* in the uſe thereof, ſuch are *Brogers*, *Bankers*, *&c.*

X. And to prevent all *Confuſion*, and the *too great Advance* of any particular ſpeices of Monyes, the Cities of *Amſterdam*, *Hamburge*, &c. have erected a *Bank* for the *Regulation* thereof, according to the true Intrinſick Value of every Species.

XI. *Exchange* that is done by *Bills of Exchange*, conſiſts in a *Contract* and *Agreement* betwixt two Parties, whereby the one Party gives his Bill for the Payment of a certain preciſe Sum of Monyes, at a certain and limitted time, in a certain and limitted place, for the value of the ſame Sum already received, or preſently to be paid by the other Party; this is called by *Marius*, *Real Exchange*.

XII. Exchange may again be ſubdivided, *viz.* into the *Merchants*, and the *Uſurers Exchange.*

XIII. *Merchants Exchange* conſiſts in a Trading in or with Monyes from one Place, City or Nation, to another, upon an uncertain Profit; and this ſort of Trade, is by way of Excellency termed, *Simple Exchange.*

XIV. *Uſurers Exchange* conſiſts in a giving Monyes upon Intereſt, with condition to receive the ſame Sum of Monyes, with a certain Profit, at a certain time, and in the ſame place; and this is called by *Marius*, *Dry Exchange.*

XV. *Merchants Exchange* is either *actual*, and that which is *really performed* and *accompliſhed*; or only *pro Formâ.*

XVI. The *Real* Merchants Exchange conſiſts in a real and effectual Contract and Negotiation betwixt the *Drawer* & the *Remitter*, concerning the *Courſe of Exchange*, and the *Time* and *Place of Payment.*

XVII. But that *Exchange* that is only *pro Formâ*, conſiſts only in a *Conſent*, that the Name of a certain Perſon be uſed, as the *Remitter*,

Remitter, (that the Bill may want nothing of its Formality) without any real Contract or Negotiation.

XVIII. Again, this *real Exchange* is two-fold, either *Certain* or *Conditional*.

XIX. *Real Certain Exchange*, is, when the Sum expreſt in the Bill muſt *really* and *certainly* be paid.

XX. But *Conditional Exchange* is, when the Payment of the Sum, named in the Bill, muſt firſt be made, upon the arrival of ſome Ship, or of ſome certain Goods, or upon ſome other Conditions.

XXI. To the Compleating of an *Exchange-Negotiation*, four Perſons are conſidered and required, two at the place where the Courſe, Place, Time of Payment, and the Sum are agreed on, to wit the *Drawer* and the *Remitter*: and at the Place of Payment are alſo two, to wit, the *Perſon* on whom the Bill is drawn, who muſt *Pay*; and the *Perſon* to whom the Bill is remitted, who muſt *Receive*.

XXII. *Exchange* is again ſubdivided into *Negotiated*, and *diſcounted Exchange*, or *Reſcontred Exchange*.

XXIII. *Negotiated*, is, when the *Drawer* and the *Remitter* are *two diſtinct Perſons*, betwixt whom there hath been an *actual Contract* and *Agreement* concerning the *courſe*, &c.

XXIV. *Diſcounted Exchange*, is, when the *Drawer* and the *Remitter* is *one and the ſame Perſon*, that at the ſame time *draws* and *remits*.

XXV. *Negotiated Exchange*, is again *two-fold*; either *Pure*, or *Mixt*.

XXVI. A *Pure Negotiated Exchange*, is, when really Money is given for Moneys to be received, according to the contract betwixt the *Drawer* and the *Remitter*, whereby the *Drawer* obligeth himſelf to pay the value he hath received of the *Remitter*, according to the courſe in another place, at a certain preciſe time.

XXVII. *Mixt Exchange* conſiſts in a contract betwixt *Debtor* and *Creditor*, whereby the *Debtor* obligeth himſelf to the true payment of the Monyes, according to the cuſtom of Exchange.

XXVIII. Again, all *Exchanges* are either

ther for a *Man's own*, or for ſome *Principal's account*, or in the *Name of another*.

XXIX. When it is for *Proper account*, it concerns the Perſon, that is either *Drawer* or *Remitter*.

XXX. When its for the *Principals account*, the *Factor* treats and concludes in his *own Name*, but the *Sum*, &c. is for the *Principals account*.

XXXI. And it is in the *Name of another*, when its done only by the *full Power* and *Letter of Attorney of another*.

XXXII. And laſtly; *Exchange* is either *directly* to a *certain place*, or *indirectly*, and is ſent to ſome *other place* firſt, to be negotiated.

CHAP. II.

Of the Duty of Mackelers *or* Exchange-Brogers.

Rule I. EXCHANGE is concluded, either by the *Mackelers* or *Brogers*,

alone betwixt themſelves, or by bringing the Parties face to face.

II. *Brogers*, &c. are Perſons Sworn and Authorized by the Magiſtrate, whoſe Work and Trade it is, to enquire of Perſons that have any Monyes to *remit* or to *draw*, and to *argree* ſuch Perſons concerning the Conditions, acting Impartially between them both.

III. It is their Duty to be *Diligent*, *Faithful* and *Private*, and not to *Cheat* or *Overreach* either the *Drawer* or the *Remitter*, in any wiſe.

IV. He muſt be content with that Reward for his Pains and Labour, that the Magiſtrate hath allowed him, which is called by the the *Hollanders* COURTAGIE: He muſt not exact more of one than another, nor ſerve any man for nothing.

V. Thoſe *Covetous Exchangers* that will ſave the *Courtagie*, by concluding their own *Exchanges* face to face, without the help of the *Brogers*, or that uſe to deduct from their allowance, or that will uſe *Ignoramus*'s becauſe they will ſerve for leſs than the Allowance, or may be for nothing at all, do ſometimes in the Courſe of *Exchange*, pay the *Courtagie* double and tribble.

VI.

VI. A *Broger* muſt be very diligent and prudent, and muſt firſt of all know of the *Drawer* and *Remitter*, to what certain place they will Exchange; and if it be to ſuch a place where there is alwayes a *certain Uſance* obſerved in the Payment of Bills, then he hath nothing to do, but to treat of the *Courſe* or *Price* of *Exchange*. But in caſe they would Exchange to Places, where *no certain Uſance* is kept, but the Bills muſt be made at ſhorter or longer date or ſight, *&c.* then he muſt be expreſs and certain, as to the *preciſe Time of Payment*, and other neceſſary Conditions.

VII. When the *Mackeler* or *Broger* hath concluded with any, then muſt he tell the *Drawer*, to whom he will have his Bills made Payable, and muſt thereupon note in his Book, *What the Sum was for which he concluded*; *What time for Payment of the Bill*; *To whom it muſt be paid*; *From whom the Value muſt be received*; and *At what Courſe the Exchange was made*: Which *Memorandum* he muſt give to the *Drawer*, that he may accordingly make or endorſe his Bills of Exchange.

VIII. Its the *Brogers* Duty alſo, to *fetch* the Bills, when they are made, from the *Drawer*, and *carry* them to the *Remitter*.

IX. He is obliged to keep a perfect and true *Regiſter* of every particular Bill; and muſt Note in his Book at home, *Who the Parties were*, as well the *Remitter* as the *Drawer*; *To what Place the Bill was directed, and to whom*; *To whom it was Payable*; *At what Time*; *and what the Courſe was*; *And the preciſe Day when this was concluded on.*

X. And in caſe of any Difference betwixt the *Drawer* and *Remitter*, the Word and Regiſter of the *Broger*, that is of known Honeſty, will be the *greateſt Evidence*, and the *Beſt*.

XI. No Prudent Merchant will oblige himſelf to one *Broger* alwayes, nor prefer one to another, but allow to any of them their *Courtagie* (without making any Difference among them) that ſhall firſt offer the Courſe to him, at which he reſolves to conclude; By thus doing, he diſobligeth none of them, but animates them all to his Service.

XII. Its a great Fault and Abuſe for Merchants to *Contract* with the *Broger*, upon hazard, before the Exchange-time.

XIII. Its a great Imprudence in any Merchant that hath but little Credit of his own, when he hath occaſion to draw, to give Orders

Orders to all the *Mackelers* or *Brogers* for it.

XIV. A *Broger*, in the concluding of Exchanges, muſt not uſe his Liberty, or conclude any thing, either as to the *Time* or the *Courſe*, without Order.

XV. A *Drawer* hath great reaſon to be Angry at the *Broger*, when he without his Knowledge, concludes any thing at a lower or diſadvantagiouſer Courſe, than he gave order for, though the *Broger* ſhould offer to make good the loſs; for his Credit is therein concerned.

XVI. A *Drawer* hath no leſs reaſon to be Angry with the *Broger*, if he without his Knowledge or Order, promiſe the *Remitter any Time* for the *Payment* of the Value.

XVII. A *Drawer* is not obliged to make his Bills at *ſhorter Sight* or *Time*; nor is the the *Remitter* obliged to accept of Bills made at a *longer Time of Payment*, or on any other Perſon than was agreed on by the *Mackeler* or *Broger*.

XVIII. Its the Duty of the *Broger* to maintain the Credit and Reputation of the *Drawer*, as much as he can (if it be not contrary

trary to his Knowledge) But it is not advisable for him to oblige himself for his Sufficiency, which some *Brogers*, for Covetousness of the *Courtagie*, have too late Repented of.

XIX. Unknown Bills of young Beginners, or of those that seldom frequent the Exchange (who may be sufficient enough) a *Broger* may freely offer; but it greatly tends to the Diminution of his Credit, if he ordinarily offer Bills of those that are known to be of little Repute or Credit, especially if he recommend them; yea, it is perfect Knavery in him to draw for any man, whose Bills he knows will not be answered, or remit for any, who he knows cannot pay the Value.

XX. *Brogers* must diligently guard against *Lying* and *Cheating*.

XXI. A wise Merchant will not credit again that *Broger* that hath once Cheated him.

XXII. A wise Merchant will not suffer himself by the Insinuations of *Mackelers* or *Brogers*, to be seduced, in hopes of great Advantage, to act any thing contrary to Honesty, or the Laws of the Land.

XXIII. He that by a *Letter of Attorney*, or

or full Power, will draw in another's Name, is Bound expreſly to ſignifie ſo much to the *Broger*, and the *Broger* muſt conclude the Parcel in the Name of the *Principal*, not in the Name of the *Perſon that hath the Order*.

XXIV. The Merchants, both the *Drawer* and the *Remitter*, will before they conclude finally and abſolutely, enquire of the *Broger* of the ſufficiency of each other; and it is the *Brogers* Duty to inform them as well as he can.

XXV. When an Exchange is concluded, by the help and aſſiſtance of the *Broger*, it cannot be repented of, without the conſent of the Party, and the *Brogers* Courtagie muſt be paid him; beſides, it reflects upon either of them, to fly from their Words.

CHAP. III.

Of the Courſe *of* Exchange.

Rule I. IN treating about, or Negotiating of a *Bill of Exchange*, the *Remitter* will ſeek to conclude for his moſt Advantage; but the *Drawer* muſt have reſpect to his Credit, and not draw, but at an honourable Courſe.

II. It is not possible that the *Drawer* should alwayes get the very heighth of the Course, nor are all Bills of one and the same Course; but according to the Plenty or Scarcity of Monyes, or Bills, the Course alters in a little time; wherefore Merchants must be curious and exact in concluding an Exchange.

III. When there is plenty of Money and scarcity of Bills, then the *Drawer* may hold hard, and delay to conclude; but if the contrary, and if he must needs draw, let him not neglect nor delay.

IV. In the concluding of a *Bill of Exchange*, if the *Parties* and *Brogers* only treat about the Course, not mentioning any other Conditions, then the other Conditions are supposed to be such, as the Custom of the Place, to which the Bill must be directed, ordinarily allows of, not only in respect of the Time of Payment, and the Species in which the Bill must be paid, but in all other respects.

V. He that will remit or draw at longer or shorter time, or will pay or receive other Species of Monyes, &c. than are usual and customary at the Places where the Exchange is concluded, or the Bill to be paid, he must before he conclude, expresly condition for such things.

VI.

VI. *Exchange* is performed either in a *Domeſtick* or *Forreign Coyn.*

VII. In a *Domeſtick Coyn*, when the Bill muſt be paid in the ſame Sort & Species of Monyes, that the Remitter paid to the Drawer for the Value; and theſe are uſually *Inland Bills.*

VIII. In a *Forreign*, when the Bill is paid in another Species and Coyn, than the Drawer received; and ſo are uſually all *Forreign Bills.*

IX. In all Exchanges, the *Coyns* in one place, as well as another, are Certain and Immutable; and the change of the Courſe, either higher or lower, depends upon the *preſent Value of the Coyn* in the Place where the Bill is directed to.

X. It is then called [*Pari*] when Money for Monyes is Exchanged, receiving neither more nor leſs in Value, than the Value received was.

XI. The *Drawer* is ſaid to Exchange with Advantage, when he concludes for a Courſe that is above [*Pari.*]

XII. The *Remitter* is ſaid to Exchange with

with Advantage, when he payes the *Drawer* leſs than the [*Pari.*]

XIII. He that remits his Monyes, in hopes of Advantage, doth not always advance by his Remiſes.

XIV. The Exchange of Monyes from *London* to *Antwerp*, *Amſterdam*, *Rotterdam*, &c. is made upon the Pound Sterling of 20 *s.* *viz.* they give ſo many Shillings Flemiſh for a Pound Sterling; *Hamborough* the ſame.

The Exchange from *London* for *France*, as *Paris*, *Roan*, is valued on the *French Crown*, *i. e.* ſo many Pence *Sterling*, for the *French Crown*.

The Exchange to *Venice* is made upon the Ducat; and to *Legorne* upon the Ducat Piece of Eight.

XV. The *Pari* of the *Netherlands*, with the Pound Sterling, is, 33 *s.* 4 *d.* *Flemiſh*. Of *Hamborough*, with the Pound Sterling, 32 *s.* *Flemiſh*, or four Dollars. Of *France*, 72 *Soulz*, or 6 *s.* Sterling. The *French Crown* of *three Livers Tournois*, the *Liver* reckoned at 2 *s.* Sterling, and every 10 *Soulz* for 12 *d.* Sterling. Of *Leghorne*, 54 *d.* *per* Dollar, or piece of Eight. Of *Venice*, 51 *d.* Sterling *per* Ducat.

The *Pari* between *Antwerp* and *Paris*, or *Holland*

Holland and *France*, is for the *French Crown* of 60 *Soulz*, or 3 *Livers Tournois*, 89 $\frac{1}{2}$ groſs of *Antwerp*, which is the true value of that Crown.

CHAP. IV.

Of the Reduction *of* Exchanges.

Rule I. THe Value of a *Bill of Exchange* is reckoned by reducing the known into the deſired Sum of Moneys, according to the Courſe agreed upon.

II. In Exchanges, ſometimes the Conditions are for Moneys of one and the ſame Denominations and Species, and ſometimes of different.

III. When Exchanges are made for Moneys of one and the ſame Denomination and Species, then uſually the Contract runs at ſo much the Hundred either Profit or Loſs.

IV. And when it is thus concluded on, then it is certain, that as much as the one gaineth, the other looſeth upon every Hundred.

V. When an Exchange is concluded for Moneys of different Denominations, then the Courſe is made ſometimes in a *Domeſtick*, ſometimes in a *Forreign Denomination.*

VI. To calculate the *Pari* of an Exchange, in drawing and remitting *(na Ravaglie)* at a certain limitted Price, this only is to be obſerved, that when we are forced to draw at a diſadvantagious Courſe, we muſt remit at ſo much the more proportionably advantagious Courſe; and when we cannot remit, but at an Unprofitable Courſe, we muſt ſee to make ſo much the more Profit by the Draught.

VII. If any order his Correſpondent to remit Moneys to another place, where he hath occaſion for it, and to draw the Value upon himſelf, and will calculate to how much the Remiſe will ſtand him, he muſt add to the Principal Sum, the Proviſion for his *Factor*, and Courtagie for the *Broger*, which is, for the Factor, half *per Cent*, for the Broger, one *per Mille*, uſually.

VIII. If any will calculate whether it be more profitable to order his Correſpondent to draw upon him directly, or by ſome other way indirectly and about, he muſt alſo conſider,

conſider, that he hath both *Proviſion* and *Courtagie* to pay to his Correſpondent, whom he orders to accept, in caſe he be ordered to Revalue the ſame; but if he remit to his Correſpondent, then there is only Proviſion, and no Courtagie due; yet the *Courtagie* muſt be conſidered in the *Calculation*, becauſe the *Principal* himſelf hath paid it.

IX. If any will calculate, whether it be more Profitable to let his Effects be remitted directly, or by ſome other wayes about, he muſt obſerve, beſides the Calculation and Equalling of the reſpective Courſes to and fro, if the Remiſes are not made directly to himſelf, that he hath double or tribble *Proviſion* and *Courtagie* to allow, and will loſe a conſiderable time before he get his Moneys; but if the Remiſe be direct, or he himſelf, draw his Moneys in, he hath but ſingle Courtagie and Proviſion to pay or allow.

X. To calculate the Profit or Loſs of a remitted and a redrawn Remiſe, the Profit muſt be diminiſhed, or the Loſs augmented, with double Courtagie, *viz.* *for the Draught*, and *for the Remiſe*; andwhen any will caculate what is loſt or profited by a Remiſe, that is now returned, or to be returned, they muſt from the Sum remitted, that is elſe-where to be received, ſubſtract the Proviſion and

Courtagie, and the Remainder is the *Apointee* (the *Neat Sum*) which muſt be reduced according to the Courſe of Exchange; and then they have the Product of the Rechange: Let this be compared with the Sum that was firſt remitted, having added the Charges thereof thereto, and then it will eaſily appear, what the Profit or the Loſs was by that Negotiation.

XI. In Calculating, according to Proportion, how much by the hundred is gained or loſt by Exchanges in a Year, in Remiſes, we cannot alwayes ſtrictly account of the time, ſeeing its ſeldom that the day of Payment, and the Expiration of the Term of the Bill meet together, nor can the Moneys received be alwayes again remitted the ſame day; but in drawing, the Time may be preciſely accounted of and calculated, becauſe Draughts moſt times, before, and at fartheſt, on the laſt day of the Term are again Re-valued.

XII. If a *Factor* be drawn upon, with order to re-draw the Value again on the Principal, or elſe-where, he muſt charge the Value of the Draught with his Proviſion and Courtagie, and the Product is the *Neat Sum*, that he muſt charge him with. On the contrary, when a Factor hath Moneys remitted to him, with orders to remit the ſame to ſome other Place,

Place, he muſt from the Sum remitted, deduct his Proviſion and Courtagie, and the Remander is the *Neat Sum*, that he muſt remit. So alſo, when a Factor is ordered to remit to one Place, and to value on another, he muſt firſt remit, and then to the Sum remitted, add his Proviſion and double Courtagie, and then he receives the Sum he diſburſed. But if he firſt have drawn a certain Sum, and then will reckon how much he hath to Remit, then he muſt from the Sum drawn, deduct his Proviſion and double Courtagie, and the Remander is the *Neat Sum* that he muſt Remit; which Sum, if the Exchange be made in a Forreign Denomination of Coyn, muſt be reduced according to the Courſe agreed on, to the Value of that Coyn that muſt be expreſt in the *Bills of Exchange*.

XIII. Proviſion muſt as often be reckoned in the Calculation, as it is Exchanged or Remitted, or turned over; but the Courtagie is allowed to no Factor, unleſs he do actually Negotiate the ſame, either by Drawing or Remitting.

XIV. In Calculating the Charges of Bills of Exchange, that are proteſted for Non-Payment, the Courſe of the Re-change is reckoned, as it were, the Day, or the Poſt day after or before the Bill of Exchange was

proteſted, at the Place where it was proteſted, to the Place whence it came, at ſight, and to the Sum is added, half *per Pound* for Proviſion, one *per Mille* for Courtagie, the Charges of the Proteſt, and the Poſtidge of Letters.

CHAP. V.

What a Bill of Exchange is, *and what the* Drawer *before the* Delivery *thereof, and the* Remitter, *before the* Receit *thereof, muſt narrowly obſerve.*

Rule I.

THe *Drawer* is obliged to give to the *Remitter*, *Bills* for the Sum Negotiated.

II. The *Drawer* ought to obſerve, before he ſubſcribe the Bill, at leaſt, before he part with it, and the *Remitter* before he receive it, at leaſt, before he ſend it to the Poſt, or if he redraw the Value, before he endorſe it, or part with it out of his hands, if it be well and truly made, and all the neceſſary Requiſits fully expreſt in it.

III.

III. A Bill of Exchange is an obligatory Writing, containing, (1.) a Time When, (2.) the Place Where the ſame is diſpatched, (3.) the Sum, (4.) agreed on, and ordered, (5.) at a certain Day, (6.) To whom it muſt be paid, (7.) From whom (8.) the Value is received, (9.) ſubſcribed by the Drawer, with a Superſcription (10.) to him that ſhall pay it, and ſatisfie it, and (11.) the Place where it ſhall be ſatisfied. Theſe are the Requiſits of a Bill of Exchange.

IV. 1*ſt*, Both the Parties muſt obſerve, that the Bill be rightly dated and clearly expreſt.

V. 2*dly*, That it name the Place where it was made and concluded on.

VI. 3*dly*, That the Sum be expreſt ſo clearly, both in Words and Figures, that no Exceptions can be taken againſt it.

VII. 4*thly*, That the Payment thereof be ordered and commanded.

VIII. 5*thly*, That the time of Payment be not dubiouſly expreſt, nor neither ſooner nor later than the time agreed on.

IX. *6thly*, The *Remitter* must especially observe, that the Name of the Person to whom Payment must be made, be well and truly Spelled; or if it be made to his Order, that those words be clearly writ.

X. *7thly*, *8thly*, He must also observe if his Name be therein, and the Value of him be expreſt.

XI. *9thly*, He must observe, that the Bill be under-writ by the *Drawer*.

XII. *10thly*, The *Drawer* must principally look to the Direction and Superscription of the Bill, that it be well and truly made, and directed to the right man.

XIII. *11thly*, They must both observe, that the Place wherein the Payment must be made (and the Coyn or Species wherein it must be paid) be fully expreſt in the Superscription, or in the Body of the Bill: And if a *Drawer* draw upon one that lives not at the place where the Payment must be made, then must the *Remitter* observe, that as well the Place where the Person that must pay liveth, as the place where the Payment must be made, be expreſt.

XIV.

XIV. Here follows the Form of a Bill of Exchange.

York, April 23. *Anno* 1680. *pro* 1000 *Rixdollar Specie.*

"AT Uſance, Pay this my firſt Bill of "Exchange (my ſecond, of the ſame "date, being yet Unpaid) to Mr. *N. W.* or "his Order, the Sum of One Thouſand ſpecie "Rixdollars, the Value received here of Mr. "*C. K.* Make good Payment, and place it "to Account, according to Advice from

To Mr. N. C. *Merchant* } Sir, Yours
1.*a in* Hamborough. } *J. S.*

XV. Sometimes it falls out, that but one *Sola* Bill of Exchange is made for one Parcel, but ordinarily, eſpecially when the Places are of any conſiderable Diſtance, two, and ſometimes three muſt be made, and the firſt is called *Prima*, the ſecond, *Secunda*, *&c.*

XVI. A *Remitter* deals imprudently when he requires or accepts of one *Sola* Bill of Exchange for one Parcel, though it be to be paid upon ſight, if the Place of Payment be of any Diſtance conſiderable, from the place where the Contract was made.

XVII.

XVII. The *Drawer* is obliged to give the *Remitter* as many ſeveral Bills of Exchange as the *Remitter* deſires, and to proportion the Sums, according as the *Remitter* requires; on the contrary, the *Remitter* is obliged to receive as many Bills from the *Drawer*, and to furniſh him with ſo much Moneys as the Sum agreed on will amount to.

XVIII. The *Drawer* deals imprudently when he makes more Bills of Exchange than one, for one and the ſame Sum, and of one and the ſame Import. And in caſe the *Remitter* require of him thus much, then let him make one Bill for the Sum the *Remitter* deſires, and let him for the other Sum make two Bills, all amounting to the deſired Sum, *i. e.* If the *Remitter* would have two 500 Dollar Bills at one time, let the *Drawer* make one 500 Dollar Bill, and divide the other 500 Dollars into two Bills.

XIX. The *Drawer* muſt eſpecially obſerve, that for one and the ſame Parcel of Moneys, he make not two *Prima's* or two *Secunda's*, but he muſt obſerve to diſtinguiſh them clearly, as well in the Body of the Bill, as on the Superſcription.

XX. Its Prudence in a *Drawer*, when the *Remitter*

Remitter requires a *Secunda Bill*, &c. and the *Drawer* is not certain whether he hath given him a *Secunda* or not, to make a Third or *Tertia* Bill inſtead of a *Secunda*, and ſo inſtead of a *Tertia* a *Quarta*, &c.

XXI. The *Drawer* muſt alſo obſerve, that all the Bills that are for one and the ſame Parcel, muſt bear one and the ſame date, and muſt be in every reſpect alike; only with this difference, that one is the *Prima*, another the *Secunda*, &c.

XXII. A *Drawer* may direct his Bills to whom he pleaſeth, that hath Authority, and is obliged to accept them, and by the acceptance obligeth himſelf, yea, on his own Servant, whom he maintains abroad.

XXIII. A wiſe *Drawer* will make no Bills payable at ſight, nor at ſo many Dayes, Weeks or Moneths after the ſight.

XXIV. Neither ſhall he, if he can any way void it, make any Bills payable to him, on whom he draws, unleſs he be abundantly ſatisfied of his Sufficiency and Faithfulneſs.

XXV. The *Drawer* is obliged to accommodate the *Remitter*, by altering the Bills when he requires it (though already made according

according to his order) either by dividing the Sums, or making them payable to another, in caſe no man elſe hath endorſed them, if the *Remitter* will be at the Charges of Poſtidge of the Letters, &c. but if the Bills be accepted or endorſed, the *Drawer* muſt be very cautious in altering any thing.

XXVI. A cautious Drawer will be careful to change or alter in both or all the Bills, what he changeth or altereth in one.

XXVII. No *Remitter* is obliged to receive any *Bills* from the *Drawer*, which are made payable by the *Drawer* himſelf, except at the great *Marts* and *Fairs*.

XXVIII. When in the concluding of a Parcel, the Broger expreſly promiſeth to the Remitter, that the Drawer ſhall deliver him Bills, that are drawn, endorſed or accepted by a known ſufficient man; then the Remitter is not obliged to receive the Drawers own Bills, nor unaccepted Bills, nor any other Bills that are only endorſed by the Drawer.

XXIX. A Remitter muſt be cautious in accepting or receiving of accepted Bills of Exchange, which are made payable to the Order of the Drawer, and endorſed by him, unleſs he knew the Drawer to be ſufficient.

XXX.

XXX. He muſt alſo be cautious of receiving Bills that are made, drawn or accepted by a known ſufficient man, whoſe Hand-writing he knows, if the Endorſer or the Drawer in of the Value be an unknown Man.

XXXI. A Remitter that muſt have Bills Payable at ſight, is not obliged to receive Bills whoſe term of Payment are nearly expired, or will in probability be expired before the Bills can arrive at the place of Payment; and if he be blameable at any time for this, its then moſt of all, when he knows the Poſt is very uncertain, by reaſon of the badneſs of the wayes, or other Inconveniences, unleſs the Drawer will ſufficiently warrant and enſure him, though Payment ſhould not be demanded before the Term was wholly expired.

XXXII. *Marius*'s Advice is, that the *Drawer* when he hath made his Bill, ſhould make the Direction on the inſide of it towards the left Hand, that there may be more room for Endorſment, and for a Receit or Acquittance.

XXXIII. He adviſeth alſo, That if it can well be avoided, that never any Bills ſhould be made Payable to the Bearer, nor to any one Perſon, naming his Name (but *To him, or his Order*) for both theſe wayes are dangerous.

XXXIV

XXXIV. The ſame *Marius* adds a Caſe, which I believe ſeldom happens, *viz.* That both the *Drawer* ſhould forget to direct, and the *Remitter* not take notice that ſuch a Direction was wanting, yet in this caſe he ſayes, If the Remitter adviſe his Correſpondent, on whom it was drawn, the Poſſeſſor may demand Acceptance, and in Caſe of Refuſal, Proteſt, and recover the Charges of the Drawer, againſt whom he Proteſts; yet in this caſe alſo, if the Acceptant have a Letter of Advice, deſiring him to accept, and he have in hands to anſwer with, he may ſafely accept, though the Bill be not directed; but the Drawer, for his Error ought to be Corrected, and that by a Proteſt.

CHAP. VI.

Of Placing Bills of Exchange *to Account.*

Rule I.

EVery Individual, that is concerned in a Bill of Exchange, is obliged to place ſo much to Book as he is concerned in it.

II.

II. A Drawer muſt place to Book exactly and diſtinctly the Contents and Circumſtances of every Bill, before he make the Bills, or at leaſt, before he deliver them to the Broger or Remitter, he muſt note, *The Day When*, *The Place Whither*, *The Perſons*, *By Whom*, and *To Whom Payable*, *For Whoſe Accounts*, *From Whom the Value*, *The Time when to be Paid*, *The Sum*, and *the Courſe*, &c. that ſo, if at any time ſecond, third or fourth Bills ſhould be demanded, they may all of them be made alike.

III. The Remitter ſhould as ſoon as he receives the Bills, place them to Book, at leaſt, before he pay the Value to the Drawer, whether he effectually Remit, or deſign to Redraw the Value again.

IV. When the Remitter receives not the Drawer's own Bills, but Bills endorſed by him, he ought narrowly to obſerve, *What Date they bear*, *From What Place they come*, and *By Whom they were firſt made*, *The Sum they are for*, and *When to be Paid*, and *To Whom to be Paid*, *The Courſe that he agreed upon*, and *To Whom the Bill is Endorſed*; and then it will manifeſtly appear to him, if there be any Deceit or Abuſe in the Endorſing of it, or any other Defect.

V.

V. The Drawer and Remitter ſhould alſo in ſome convenient place in the Book, note the *Mackelers* or *Brogers* Name to every Parcel, that in caſe of any Diſpute or Inconveniency (as alſo the better to account with the Broger) they may know with what Broger they concluded.

VI. A Remitter that does not effectually Remit, but deſigns his Moneys to be Redrawn, and therefore orders the Bills to be made Payable to himſelf, or Order, would do well, at the ſide, or under every Parcel, to expreſs the very Day of Payment, and beſides, leave the ſpace of an Inch or more, that ſo he may note under it, *When he Redrew it*, or *Tranſported it*, *To Whom*, and *By Whom Endorſed*, and *From Whom the Value*, *&c.*

VII. When the Remitter ſends his Bill to any, to demand Acceptance, he ought to note, near the Parcel entred in his Exchange-Book, *When*, and *To Whom he ſent it*, and *When he receives it again accepted*; then may he cancel the former.

VIII. And when Bills are ſent to any, to procure Acceptance, with order to detain them, till the ſame, with the Endorſed, be demanded, this ought alſo carefully to be Booked;

Booked; and he that receives ſuch a Bill ſhould alſo obſerve, and note, *From Whence he received it*, and *To Whom he delivered it*; he ought alſo to obſerve, *The Day of Payment*, that in caſe the ſecond or endorſed Bill come not in time, he may by Virtue of the accepted Bill ſolliciate the Payment, by offering ſufficient Caution to the Accepter, or (*Namptiſeren*) deſire him to pay the ſaid Moneys to the Magiſtrates, by them to be kept, or proteſt in caſe of Refuſal.

IX. So ſoon as any receives a Bill of Exchange, at leaſt, before he demand Acceptance, he ought to Book it, and Note, *From Whence it came*, *By Whom brought*, *For Whoſe Account*, *In Whoſe Letter*, *Of What Date*, *For What Sum*, *By Whoſe Order*, *When*, *and to Whom Payable*; and in like manner, when it is an Endorſed, or a Re-drawn Bill, he muſt obſerve, *When and Where it was firſt concluded*, and *How*, *and by Whom it came Endorſed to him*; and if the Parcel were remitted to him for his own Account, he muſt note the Courſe it was done at, and for how much he muſt Credit his Correſpondent for it.

X. When the Letter of Advice expreſſeth, That the Bill is to be paid to the *Remitter*, or his (or any other Order) the *Acceptant* ought to leave a ſpace in his Book, where he notes

the Parcel to note, by whom it was preſented to be accepted, and when the Payment muſt be made: If he find Endorſement upon Endorſement, before the Payment be made, he ought to ſpecifie all the Endorſements in his Books, beſides the Parcel, one after another, till he come to the Perſon to whom the Payment is made.

XI. The *Acceptant* ought alſo curiouſly to obſerve, and note under the Parcel, that, and when he accepted the Bill, that if the *Drawer* hath been negligent or miſtaken, and hath made two or more divers Bills of the ſame Tenure, for one and the ſame Sum payable to order, the *Acceptant* may be cautious in accepting, and muſt not only note the Endorſements, if any be found on the Bills that are preſented for Acceptance, but alſo narrowly obſerve, whether he accepted the firſt or the ſecond Bill, and note it in his Book, leſt he ſhould accept two divers Bills for one and the ſame Sum.

XII. The *Acceptant* ſhould, ſo ſoon as he gets Advice, that his Correſpondent hath drawn upon him, note the ſame in his Memorial, viz. *From What Place, By Whom, What Sum, What Date, At What Time,* and *To Whom, or Whoſe Order the Bill is made Payable*; and ſo in caſe the Bill be for his own account,

account, he muſt note in his Book, *The Courſe it was drawn at, and the Sum for which he muſt Debit him*; and this he ſhould do, *extempore*, not waiting till the Bill be preſented for acceptance, or Payment be demanded.

XIII. Though it be not abſolutely neceſſary, yet it is not reproveable, if the Perſon on whom a Bill is drawn, ſhould note in his Memorial, even thoſe Bills that he ſuffers to be proteſted for Non-Acceptance; but then he muſt alſo add, that he ſuffered them to be proteſted for Non-Acceptance.

XIV. He that hath a Bill of Exchange in Poſſeſſion, which was not accepted, or not at the due time paid, though it was accepted, and ſo is proteſted for Non-Acceptance or NonPayment, muſt alſo note in his Memorial, underneath the Parcel, *When, and to Whom he ſent the Proteſt, with or without the Bill of Exchange.* And ſo, in caſe a third Perſon, or he himſelf accept, and pay the ſame Bill, in honour of the *Drawer*, or of any of the *Endorſers*, he ought diligently to note, and obſerve the ſame in his Memorial, with all the Circumſtances.

XV. He that doth not Voluntarily, but *ſupra* proteſt, in honour of the *Drawer*, or any other Perſon, accept and pay a Bill, muſt

at the entring of the Parcel to Book, note, *For Whoſe Account he accepted the ſame*; and ſo when the Bill is drawn in, not on the *Acceptant*, but on ſome other that ſuffered it to be proteſted, the Acceptant *ſupra* Proteſt muſt make a perfect and compleat Entry thereof, as if the Sum had directly been drawn upon him, to wit, *When*, *By Whom*, *What Sum*, *To Whom*, *At What Time Payable*, and *On Whom it was drawn*, and that he *accepted the ſame* ſupra *Proteſt*, *in honour of the* Drawer *or ſome* Endorſer.

XVI. If a Bill be made payable ſome time after ſight, or at Uſance (if Uſance be reckoned after ſight) the Acceptant and the Poſſeſſor of the Bill, muſt enter in their Memorials, the date of the Acceptance, to calculate the day of Payment by; and it is a good and laudable Cuſtom in all Merchants, as well Acceptants as Poſſeſſors of Bills, to enter underneath, or at the ſide of the Entry of the Parcel, the day of its being due, whether the Bill be payable after ſight, after date, or at uſance.

XVII. If any receive Advice from his Factor, that his Factor hath drawn or remitted for his account, to ſome other Place, the Principal ſhould alſo note in his Memorial, and diſtinctly ſpecifie, *By Whom*, *From Whence*, *To*

To What Place, When, What Sum, At What Courſe, To Whom the ſame was remitted, or on Whom drawn, By What Letter, and of What Date he had Advice thereof; and when he gets further Confirmation thereof, he muſt curiouſly obſerve, if the firſt and ſecond Advice agree, or not.

XVIII. So alſo, when any draws or remits, or is drawn on, or remitted to by his Correſpondent, by order of a third, for account of a fourth; he alſo muſt in his Memorial, ſpecifie all at large, that the Book-keeper may know whom to debit, and whom to credit in the Journal.

NB, *The Entries that are here ſpoken of, in all the fore-mentioned Caſes, are not to be underſtood of a formal Journal, or leidger Entry, but only of a plain Entry into the Waſte-Book or Memorial, either by the Merchant himſelf, or any of his Servants. And from all this appears ſufficiently, that a Merchant ought to be a diligent and careful Writer.*

XIX. If any draw on his own account, upon time, or remit, or orders to be drawn or remitted on, or to his Correſpondent reſiding in ſome other place, he ought to enter in his Memorial, *When the ſame is Payable*, that againſt that time he may make neceſſary

Proviſion for the Payment, or to order the further Diſpoſal of it, and to credit or debit his Correſpondent for the ſame in his Account currant.

XX. He alſo on whom is drawn, or to whom is remitted, ſhould enter in his Memorial, *The Time of Payment, To Whom, For What Bill, What Sum muſt be demanded, or be paid*; and ſo when the Bill is made payable to order, the ſame muſt be expreſt, that the Poſſeſſor of the Bill, againſt that time, may adviſe the Acceptant, to whom the Bill is to be paid, or the Acceptant enquire, to whom its payable by the Poſſeſſor.

XXI. When a Bill of Exchange is to be entred into the Journal, the Book-keeper muſt be careful to find out the true Debitor and Creditor; and if the Bill be for anothers account, he need but enter the ſame, that he receives in that Species, or denomination of Moneys, wherein he keeps his Books; but if the Bill be for his own account, then the Product muſt not only be entred in the Species and Denomination of Moneys, wherein he keeps his Book, but alſo in that Coyn and Species wherein he keeps an Account with his Correſpondent; and in the poſting of the ſame into his great Book, or Leidger, the Forreign Coynes muſt be duely expreſt

expreſt in the Factors; *My Account* currant by him in the Lines, and the Domeſtick Coyns or Species in the places appointed for them, that ſo when he receives an account currant from his Factor, he may readily without returning to his Journal, compare every Parcel.

XXII. It is a great error in ſome, when they have negotiated Bills for their own accounts, to credit their Correſpondent inſtanly for the ſums they have drawn or remitted upon time, as alſo for the principal to credit or debit the Correſpondents account currant, when the Correſpondent hath drawn or remitted for his account, on time, ſo ſoon as he receives advice of its being done, though the Moneys is not to be paid or received till ſome Weeks or Moneths be expired; for thereby the account currant, which ſhould alwayes be clear and demonſtrative, and ſhew how the account ſtands with the Correſpondent at all times, is rendred very obſcure and confuſed; wherefore it is neceſſary that the Book-keeper enter all Parcels and Bills for proper Accounts, in a general entry, under the Title of *Exchange-Accounts*, or ſome other convenient Title, and at the time of their being due, or when the Moneys is really received or paid, then to tranſport them to their proper places. But if the

Bills be remitted or drawn for anothers account, then no entry need be made in the Journal at all, till the time of their being Paid or Received, and then is the Correſpondent's Account currant to be credited or debited accordingly.

XXIII. *Marius*'s advice is, not only to note in a Book the Name and Place of abode of him that preſents a Bill to be accepted, but alſo to keep Copies of the Bills that he accepts, and alſo adviſeth him that gets the Bill accepted, to keep a Copy thereof. But I can ſee no neceſſity hereof, if all Circumſtances be ſo particularly expreſt in the Book.

CHAP. VII.

Of Letters of Advice, &c.

Rule I.

EVery individual Perſon, that is any way concerned in a Bill of Exchange, muſt be very prompt, exact and quick in adviſing or returning of Anſwers.

II. Above all things, its the duty of the *Drawer*, without delay, by the firſt Poſt, to give his Correſpondent, on whom he draws, advice

advice thereof, that the Bill be not preſented for acceptance, before he hath advice thereof.

III. The Letter of advice muſt be full and clear, containing all the Circumſtances of the Bill, as *the Date*, *the Sum*, *for whoſe Account*, *to whom Payable*, and *of whom the Value*.

IV. If the Draught be for the account of the Drawer, or of a third Perſon, and not for account of the Acceptant, it is not neceſſary that he adviſe the Acceptant of the courſe, ſeeing the Sum to be paid is expreſt in the Bill, in the denomination and ſpecies of Moneys that is well known at the Place where payment muſt be made; but if the ſum to be paid, be expreſt in a Forreign denomination of Moneys, then is it abſolutely neceſſary to adviſe of the courſe, according to which the Reduction muſt be made, as well as of the Sum drawn, let the Draught be for whoſe Account it will.

V. The Drawer's Letter of Advice to his Correſpondent, on whom he draws, ſhould deſire him to take notice thereof, and to honour the Bill, when preſented with Acceptance, and when demanded with punctual Payment, and to Debit him for it, or to ſeek his Re-imburſement, if he draw for a third Perſon,

Perſon, of him that gave the Order for his Acceptance of it.

VI. Its alſo uſual for the Drawer by the following Poſt to confirm the Draught, &c. and if the Bill be at ſhort ſight, and for a conſiderable Sum, he would do well to give Advice thereof as many divers wayes as poſſible he can.

VII. He that Remits muſt alſo give his Correſpondent punctual Advice, *For whoſe Account he Remits, what Sum, in whoſe Bill, of what Date, and when Payable.*

VIII. If the Bill be not yet accepted, the Remitter ſhould deſire him to whom he remits, to procure the Acceptance, and for refuſal to obſerve the Cuſtom of Exchanges, *i.e.* to Proteſt.

IX. If the accepted Bill be in the Hands of any (at the place where payment is to be made) that demanded Acceptance, and the unaccepted endorſed Bill doth not mention in whoſe Hands it is, then the Remitter ought in his Letter of Advice, to give notice by whom the accepted Bill lies.

X. The Remitter muſt be careful to ſend his Bills to thoſe that will demand Acceptance,

tance, and adviſe him to whom they are made payable, or endorſed, and ſhould be careful to incloſe ſuch Bills to no other, but to him that muſt demand Acceptance.

XI. If the Remitter receive two Bills together (i. e. *prima & ſecunda*) for one and the ſame Sum, he muſt not incloſe them together in one Letter, nor ſend them in divers Letters by one Poſt; but ſend the one by one Poſt, and the other by the next, that if one miſcarry, or fall into wrong Hands, the other may be ſecured and ſent to the true Correſpondent, to demand Acceptance and Payment.

XII. If the Remitter hath but one ſingle accepted Bill, or if the accepted Bill remain at the place where it ought to be diſcharged, and ſo the Remitter hath but one Bill to ſend, then its neceſſary that the Remiſe be confirmed by the following Poſt, and clearly and fully expreſt in a Letter of Advice, that if the Bill ſhould miſcarry, the Perſon to whom it was remitted, may by virtue of the Letter of Advice make his Addreſs to the Perſon, who ſhould have accepted and paid the Bill, and forbid him to pay any ſuch Bill to any Perſon but himſelf; and if none appear before the Day of Payment, he then may demand Payment of it by virtue of the Letter

Letter of Advice, and perſwade him to pay the Moneys to him upon caution, &c. or on refuſal hereof, Proteſt againſt him.

XIII. A Remitter or Drawer, for the account of a third, muſt alſo give punctual and full Advice to him for whoſe Account a Bill is drawn or remitted, adding alſo the Courſe, and for how much he hath Debited or Credited his Account.

XIV. Its the Duty of the Acceptant, to return an Anſwer to the Drawer, whether he will accept of the Bill, when preſented, according to the Letter of Advice he hath received; and if he make any difficulty about the Acceptance, he ought ſpeedily to give the Drawer advice thereof, and not to wait till the Bill be returned with Proteſt.

XV. He that accepts a Bill *ſupra* Proteſt, whether it be the firſt deſigned Acceptant or not, he muſt ſpeedily, without delay, give advice thereof to him in whoſe honour he accepted it, and ſend him therewith the Proteſt.

XVI. If the deſigned Acceptant accept it but *ſupra Proteſt*, its not neceſſary that the Poſſeſſor of the Bill adviſe the Remitter thereof; but if the Acceptance be made by another

another, then its beſt to adviſe him, that it was accepted *ſupra Proteſt*, and by whom.

XVII. He on whom is drawn, for the account of a third, muſt alſo give an account to him for whoſe account it is, *By whom, What Sum, and at what Time Payable is drawn upon him, and whether he hath or will honour the Bills for his Account or not.*

XVIII. The Perſon to whom is remitted muſt alſo adviſe him, *For whoſe account is remitted to him, of the Remiſe, and of the neceſſary Circumſtances*; and *whether the Bills are or will be accepted or not.*

XIX. If no punctual Advice can be given, whether the Bills will be accepted or not, becauſe the Acceptant is abroad, lives not in Town, cannot be met with, or is ſuſpected, and cannot be found, &c. the remitted ought to give Advice hereof to the Remitter, and to him for whoſe account it is; and if afterwards it be accepted, he muſt adviſe them both, *That it is accepted*; yet this laſt Advice may be ſpared, if the firſt Advice be full and clear, expreſſing, *That Acceptance will be demanded*; and if not accepted, *The Perſons concerned may expect to hear of a Proteſt*; ſo that if the next Poſt bring no Proteſt, they may both conclude, that the Bill is accepted.

XX.

XX. If a Bill be not accepted, but proteſted, then the Proteſter is obliged to give Advice thereof to the Remitter, without delay, and ſhould ſend him the Proteſt. And in caſe the Bill be payable to order, and comes Originally from ſome other place, than whence he received it, the *Proteſter* doth act prudently, if he adviſe the firſt Remitter thereof.

XXI. When a Bill is diſcharged and ſatisfied, for whoſe account ſoever it be, its the Duty of the Payer and Receiver, each of them to adviſe thoſe that are concerned therein, reſpectively, except the Draught or Remiſe be for the account of the Acceptant, or the Remitted, then its not uſual, though very convenient it would be, to give advice of the Diſcharge thereof.

XXII. If any give order to draw upon a third Perſon, for his account, he ought at the ſame time to adviſe the third Perſon, *That he hath given ſuch order*, and *to whom*, and *for what Sum*, and deſire him to accept the Bills of his Correſpondent; and ſignifie to him, *how he muſt place it to Account*, or be *Re-imburſed*, by redrawing, &c. This he muſt do, leſt the *Bills* be drawn before the third Perſon have order from the Principal to accept them.

XXIII.

XXIII. He that is fore-adviſed, that he will be drawn upon, ought inſtantly to return an Anſwer, whether he hath taken notice thereof, and will accept and honour the *Bills*, or not.

XXIV. In like manner, if any give order to another, to remit for his account, to a third, he muſt alſo adviſe the ſame third Perſon, before the Remiſes come to his hands, that he hath given ſuch orders (eſpecially if the ſame are to be made at ſhort ſight) and how he will have them diſpoſed of; and its the Duty of this third Perſon to return an Anſwer, *That he hath received, and will, or will not obſerve his orders.*

XXV. If a Factor, Correſpondent, or Principal, &c. adviſe his principal Correſpondent or Factor, *That he will accept ſuch and ſuch Draughts, for ſuch and ſuch Accounts*, but afterwards refuſeth to accept thoſe *Bills*, and returns them on the Drawer with *Proteſt*, it is but juſt and equal, that he that promiſed acceptance, and refuſed it, ſhould be oliged to make good all the Loſs, whatever it be, and make ſatisfaction for the Damage done to the Credit of the Drawer.

XXVI. If the *Letter of Advice* diſagree with

with the *Bill*, in reſpect of the Sum, or the Sum expreſt in Figures in the *Bill*, with the Sum expreſt at length in the body of the *Bill*, yet that ſum is to be followed that is expreſt at length, according to *Marius* his Advice; and if the Accepter will not accept for that Sum, the Poſſeſſor may and muſt Proteſt.

CHAP. VIII.

Of the Payment of the Value by the Remitter *to the* Drawer.

Rule I.

IN Exchanging, Credit muſt be given; but the *Drawer* had need obſerve to whom he gives credit, that he give not his Bills to him that cannot or will not pay the value; and the *Remitter* had need obſerve, whom he credits, that he give not his Moneys to one that cannot or will not pay the Bills: ſo that the one as well as the other, muſt be careful, and enquire into each others Sufficiency.

II. *Bills* are ſometimes given by one, who himſelf will diſcharge them; ſometimes are charged on a Debtor, who is to diſcharge them: Whereof afterwards ſhall be ſpoken.

III.

III. The value of a *Bill* is ordinarily paid in ready Moneys; and if the Drawer be ſatisfied with any thing elſe, it is reckoned for, and as ready Moneys.

IV. All *Bills of Exchange*, that are negotiated or concluded at *Amſterdam* or *Hamborough* (or any other place where a *Bank* is erected) are payable in Bank, if they exceed a certain limitted Sum, upon Penalty, that ſuch Bills exceeding that Sum, not paid in *Bank*, ſhall be adjudged as not ſatisfied, and of forfeiture of a certain Sum to the Bank, beſides by thoſe that act contrarily; nor muſt the *Brogers* ſuffer themſelves to be employed about any *Bills* exceeding that Sum, to be payable out of *Bank*, or to act any thing to defraud or evade the ſaid Statute and Order, by dividing the ſums and leſſening them, that they may be made payable out of *Bank*, upon penalty of incurring the hazard of being ſuſpended and deprived of their Office and Employment.

NB, It is but reaſonable and equal, that in all places, where a *Bank* is erected, all Bills ſhould be paid in *Bank*; and ſo long as there was no difference betwixt Bank and Currant Moneys, this order was obſerved at *Amſterdam*, &c. but in regard now at *Amſterdam*, &c. there is three or four in the hundred difference

ference betwixt Bank and Currant Moneys, in reſpect of the Value, therefore it is ſcarce practicable now for Merchants and Shopkeepers to obſerve this order, eſpecially for thoſe that have their Correſpondence in the chief Cities of *Holland*, *Weſtphalia*, in *Sweeden*, *Denmark*, or other places on the *Baltique Sea*, ſeeing all Bills to thoſe places are concluded for, and in currant Moneys, becauſe thoſe that are Inhabitants in other places, are only indebted to their Creditors in *Amſterdam* currant Moneys, and do know of no *Aggio* or *Up-Moneys*, and would alwayes ſuſpect to be cheated or over-reached, if any thing of this nature ſhould be impoſed upon them; but by erecting a Bank currant, this inconvenience might be prevented.

V. Notwithſtanding, that ordinarily in Bills of Exchange, its ſaid, that the Value is received already, yet ordinarily the Value is not paid by the *Remitter* to the *Drawer*, till two or three dayes after the Delivery of the firſt *Bill*, and may in time enough be paid by the *Remitter*, at any time betwixt and the next Poſt.

V I. But a *Remitter* muſt not, cannot delay the *Drawer* any longer than till the next Poſt, unleſs it were expreſly conditioned, that ſome time ſhould be given for the Payment of the

the Value; if he do, then may the *Drawer* forbid the Payment of his *Bills*, and demand ſatisfaction of the *Remitter*.

VII. If a *Remitter* condition for time, for the Payment of the Value, till he hath advice of the Acceptance of the *Bills*, then is it neceſſary that he make thoſe conditions with the *Drawer* himſelf, and not relie on the Mediation of the *Broger*.

VIII. If a *Remitter* hath conditioned, not to pay the Value, till he hath advice of the Acceptance, he is (if the *Bill* be proteſted for Non-Acceptance) not obliged to pay the Value; but if it be accepted, though but by one, whoſe ſufficiency is ſuſpected, yet he is bound to pay the Value.

IX. The Payment of the Value of a *Bill*, drawn by *A.* as having a Procuration or full Power from *B.* muſt not be made to *A.* but muſt in *Bank* be writ to the account of *B.* as the Principal *Drawer*; and *A.* muſt be obliged to make his full Power appear, and ſo in the Name of the Principal muſt receive the Value, and diſcharge the *Remitter*.

X. A prudent *Remitter* will not pay the Value of a *Bill*, but upon an Aſſignation or Acquittance from the *Drawer*, expreſly ſigni-

fying, *That the ſame is in Payment of the Value of ſuch a Bill*; and this is to be obſerved as well in the Payment by *Bank*, as in *currant Moneys*.

XI. A prudent *Remitter* will not offer to pay by Caſh, or in currant Moneys, what he is obliged to pay in *Bank*, without Acquittance or Aſſignation, becauſe ſuch Payment is not ſatisfactory, and contrary to order.

XII. If the Value of a *Bill*, either in *Bank* or *Currant Moneys*, be paid to the *Drawer*, by any other than the *Remitter*, for the *Remitter*'s account, or by his Order, in caſe it appear not that ſuch Monyes is paid to the *Drawer*, upon the *Remitter's* account, and by his order; the *Drawer* would act very cautiouſly and prudently, if he demanded a Note under the Payer's hand, ſignifying, *By whoſe Order*, and *For whoſe account he makes ſuch Payment*.

CHAP.

CHAP. IX.

Of Negotiating, Drawing, in or Endorſing of Bills, made Payable to Order.

Rule I.

ITs unadviſedly done for a Drawer, if he can any way excuſe it, to make his *Bills* payable to order.

II. And a Remitter for his own account, doth not act prudently, that orders his *Bills* to be made payable to the order of his Correſpondent, or that doth himſelf ſo endorſe them, if the Correſpondent live at the place where the *Bill* is to be ſatisfied.

III. A Remitter that remits for another mans account, doth very imprudently, if he order the *Bills* to be paid to his own Order, and ſo endorſeth them; for then he himſelf ſtands obliged for the Value, without having any Advantage thereby.

IV. Alſo, he that remits for another mans account, ſhould not make the *Bills* payable to

his own order, and ſo endorſe them; for then he makes them his own *Bills*, and is obliged to anſwer the Rechange, and the Charges, &c. but if he order the *Bills* to be made payable to his Principal, or his Order, then he is obliged for no more than the Sum he received, and may place that Rechange and Charges to the Principal's Account.

V. He that remits to a third, for the account of another, the third Perſon dwelling where the *Bill* is to be diſcharged, muſt not order the *Bills* to be made payable to the order of him to whom he remits, unleſs the Principal hath given expreſs order ſo to do.

VI. If any remit for their own account, with a deſign to redraw the ſame himſelf, or order it to be redrawn by ſome other, in ſome other place, or for ſome other account, &c. then they muſt obſerve this, to order the *Bills* to be made payable (or ſo endorſe them) to their own order, or to the order of him that ſhall redraw them; for none can negotiate or redraw a *Bill of Exchange*, except it be made payable to his order who muſt negotiate it, becauſe a Bill made expreſly payable to any one, muſt be paid to him, and no other.

VII. In the Redrawing of a *Bill*, the Redrawer

drawer is looked upon, as the abſolute and firſt Drawer, and the Remitter conſidered as the firſt Remitter; ſo that the Endorſer of a *Bill* is as ſtrictly obliged as the firſt Drawer and Maker of it, and the Poſſeſſor thereof hath as much Right and Law againſt him, as againſt the firſt Drawer.

VIII. The Redrawer or the Negotiator of a Bill, does not make a new *Bill*, but endorſeth the old, in ſuch like words as theſe, *Pay this for me to* A. A. (*or to his order*) *the value hereof in my own hands* (*or from* B. B. *or*, *&c.*)

C. C.

IX. By this Endorſement, he to whom the Bill is ſent, is the true and right Poſſeſſor of it, and needs no further Aſſignation, Tranſport, or any other Title or Right, neither need he give the Drawer or the Accepter any further account of it, *viz.* how he comes by the Bill.

X. And thus, when the Endorſement is made payable to order, he to whom it is endorſed as payable, may again endorſe it, and ſo may as often be endorſed as there is room on the *Bill* for Endorſements.

XI. The Acceptant himſelf, as well as

any other, may freely negotiate thoſe *Bills of Exchange* that are by him accepted for his own account, if they be made payable to order, by the firſt Poſſeſſor or Endorſer of them; and he may again endorſe them, and negotiate them, and make them payable to his (the *Acceptants*) order, and yet all this time the firſt Endorſers ſhall be never the leſs obliged.

XII. If the Endorſement have no more than, *Pay for me to* N. N. and it be not expreſt from whom the Value was received, or was reſcounted, then its look't on as no more than a ſingle order, and the Endorſer is conſidered ſtill as the *Principal Poſſeſſor of the Bill.*

XIII. In all Endorſements, the place where, and the time when it was done, ought alſo to be expreſt; and above all, the Endorſer muſt obſerve to ſubſcribe his Name.

XIV. He that Antidates an Endorſement, is guilty of fraud and deceit.

XV. A Remitter that hath an endorſed *Bill* put into his hands, muſt obſerve if the Bill itſelf be well made, and be compleat in all its Requiſits, as if he himſelf were the firſt Remitter; but eſpecially, he muſt obſerve, if in the Endorſement, the Name of him,

him, to whom it must be paid, be well and truly writ.

XVI. A Redrawer or Endorser doth very imprudently, if he deliver into the hands of his Remitter, with whom he contracted, Bills that he hath by him endorsed in *blanco*.

XVII. But yet greater is the hazard and folly of the Endorser, to send away Bills with a *blanco* Endorsement; and yet greater is the Error, when he that sends the Bills away, and the Endorser, are two distinct Persons.

XVIII. He also is very careless and ignorant, that sends away a Bill of Exchange made payable to his order, with a design to redraw the Moneys, or to demand Payment, and doth not first endorse his *Bills*.

XIX. If an Endorser commit any Error in the endorsing, or hath neglected any thing, so that there is likely damage to follow upon it, then the said Endorser is obliged to make good the Loss, and neither the Endorsers before nor after him, are any wayes chargeable with it.

XX. The Endorser must bind himself precisely

preciſely to the tenure of the Bill, both as to the Sum and Time of Payment.

XXI. If the Endorſer cannot meet with a Remitter, for the Neat and preciſe Sum, then if he meet with two Remitters, its obſerved if he hath both the Bills (the *Prima* and *Secunda*) in his Hands, that he ought to Endorſe them both, on the one, ſo much to *A.* the value of *B.* and the reſt on *C.* the value of *D.* and ſo gives to *B.* and *D.* each one Bill; Or in caſe he find but Moneys for a part at one time, and hath time enough to keep the Bill to ſeek for more, then he endorſeth both Bills, to pay ſo much to *E.* the value of *F.* and the reſt to his order, and gives one Bill to *F.* and keeps the other till further conveniency. But if there be but one *Bill* in the Endorſers hands, and he negotiates the *Bill* with two Perſons, then he muſt endorſe that *Bill* he hath, and take the Copy of it, and endorſe it alſo, ſo much payable to one, the reſt to another; and the original *Bill* muſt be delivered to him that hath the greater Sum, and the Copy to the other, who muſt receive the reſt.

CHAP.

CHAP. X.

Of demanding Acceptance.

Rule I.

Acceptance of a *Bill*, may preſently, upon the Receit thereof, be demanded by the Poſſeſſor thereof, except it be only payable at ſome great Fair, and then Acceptance is not demanded till the Fair begin.

II. Any one to whom the *Bill* is entruſted, as well as the Remitter, or the actual Poſſeſſor thereof, may demand Acceptance.

III. Its the Duty of every one, to whom a *Bill* is ſent to procure Acceptance, inſtantly to demand it.

IV. Acceptance muſt be demanded of him only, to whom the *Bill* is directed. And

V. It ſtands in the pleaſure of him, to whom the Bill is directed, to accept it, or not; The Principal is not bound to accept his Factor's or Servant's Bill, unleſs he will; much leſs a Factor or Servant to accept their Principal's Bills.

VI.

VI. Though the designed Acceptant hath by Letter advised of, and promised Acceptance, for the account of a third Person, yet the Possessor of the *Bill* cannot compel him by virtue of his Promise to accept, if he will not voluntarily do it: But however, he remains obliged to the Drawer, to make good all the loss and damage, either in the Exchange and Charges, or in credit of the Drawer, seeing he drew relying on the Faithfulness and Promise of the promised Acceptance.

VII. To *accept a Bill of Exchange*, is to oblige himself to the Payment and Discharge thereof; and he that accepts must discharge it; for by Acceptance he makes himself Debtor; and if the *Drawer* should chance to fail, before it be discharged, the *Acceptant* must notwithstanding satisfie it, and can have no redress on the Endorsers.

VIII. *Acceptance* is either *Verbal*, or by *Writing*.

IX. A *Verbal Acceptance* is obligatory to the performance, and the Acceptant must perform his Promise; but in regard *verbal Acceptance* may be denyed, therefore its safest to have the Bill under-written by the Acceptant.

X. Acceptance by Writing is done either by a Letter, or by the Acceptants under-writing the Bill.

XI. If the deſigned Acceptant do by Letter adviſe the Poſſeſſor of the Bill, *That he will accept, and doth accept of it*, it is as obligatory, as if he had under-writ it with his own hand.

XII. The Acceptant, when he accepts, muſt under-write his Name, and the time when he accepts, thus;

[*York, April* 28. 1680. *Accepted, J. S.*]

Which if he refuſe to do, the Poſſeſſor may proteſt, as if Acceptance were utterly denyed.

XIII. Acceptance of Bills payable at a certain day, or at ſome time after date, or at Uſance, reckoned at ſome time after date, and all other Bills thus reckoned, muſt have the word [*Accepted*] but if payable after ſight, then ſome uſe the word [*Seen*, or *ſhown me*] adding the day when, or both, as [*Seen and Accepted.*]

XIV. Its cuſtomary in ſome places, that he that demands acceptance of a Bill, leaves the ſame in the hands of the deſigned Acceptant (unleſs he preſently declare whether

ther he will accept it or not) till he compare it with his Letter of Advice, and to give his Reſolution, and note it in his Memorial; but then, before the return of the Poſt, he demands it again, and a poſitive Anſwer; and in caſe he refuſe Acceptance, in manner and form above, he inſtantly, without delay, cauſeth it to be proteſted.

XV. Bills that are payable *per Caſh*, or in currant Moneys, ought preſently, without delay, to be accepted, ſuch Bills ought not to be entruſted with the Acceptant, eſpecially if payable to order.

XVI. He that receives a Bill, without declaring poſitively whether he doth accept it or not, and detains the ſame till there are ſome evil Reports ſpread abroad concerning the *Drawer*, is obliged to return the Bill to the Poſſeſſor inſtantly, that it may appear whether he hath accepted it or not.

XVII. If a Bill by negligence, or on deſign, is left in the hands of the Acceptant, till the day of Payment, or till evil and bad Reports are divulged of, and concerning the *Drawer*, and that the deſigned *Acceptant* hath not promiſed Acceptance; in ſuch a caſe, the deſigned *Acceptant* cannot be compelled to diſcharge the ſaid Bill, on pretence that he ſhould

ſhould have returned the Bill, if he would not have accepted it; for it is the Duty of the *Poſſeſſor*, to take care for his Bill, and to ſee that the ſame be either accepted or proteſted; and if the deſigned Acceptant hath not underwritten it, nor promiſed Acceptance, he is not obliged, nor can be compelled; but yet it had been prudence in him, preſently and without delay to have returned the Bill to the Poſſeſſor, and declared, that he would not accept it.

XVIII. He that receives a Bill payable at ſight, or ſome dayes after ſight, &c. and detains the ſame by him ſome dayes, without declaring whether he will accept it or no, is obliged, if he afterwards reſolve to accept it, to accept it from the day that it was preſented to him.

XIX. In caſe a Bill payable at a Moneth after ſight, be preſented for Acceptance the laſt day of the Moneth, he may accept it that day, and it will not be payable till the laſt day of the next Moneth.

XX. Though the Acceptant hath accepted the Bills drawn on him, yet the Drawer is ſtill obliged, till it be paid; but he that accepts a Bill of Exchange, is obliged to the performance, ſo long till it be ſatisfied;

no

no length of time, nor negligence in demanding can weaken, or make void the obligation; and in that reſpect, an Acceptant is more obliged than the Drawer; for if the Bill be not ſatisfied within the limitted time, and the Poſſeſſor neglects to proteſt for Non-acceptance, he thereby looſeth the advantage of ſeeking his Redreſs on the Drawer, but not on the Acceptant.

XXI. A *Remitter* acts prudently, if without delay he demand Acceptance, ſeeing delay may breed danger, and ſuſpicious Reports concerning the *Drawer* being ſpread abroad, may cauſe the *Acceptant* to refuſe Acceptance of his Bills, which before he would have done, if the Acceptance had inſtantly been demanded; and if by Fraud, or ſome other Abuſe one Bill ſhould twice be drawn in, he that demands Acceptance firſt, and gets it, ſhall oblige the *Acceptant* to make Payment, whereas the other that hath delay'd, muſt ſeek his Redreſs on the *Endorſer*, and the caſe may be as it will, having once got acceptance, then the *Remitter* hath two obliged for the Payment, whereas otherwiſe he hath but one.

XXII. It tends alſo very much to the ſecurity and peace of the *Drawer*, whether it be for his own or for ſome other account, that alwayes

alwayes, eſpecially when the Bill is payable at ſight, or ſome Dayes, or Weeks, or Moneths after ſight, or at uſance (when uſance is reckoned after ſight) the Acceptance be procured without delay, for otherwiſe he can make no true account when his Bills are due, and when payable; and in all caſes, the Acceptance is an Obligation and Security to the *Drawer* as well as to the *Remitter*.

NB, That as in moſt places it is ordered by the Magiſtrate in how many dayes after a Bill is due, it ought to be proteſted, if not paid, ſo alſo it ought to be ordered in how many dayes after the offering of the Bills the Acceptance ſhould be demanded, & when to be proteſted for Non-Acceptance, and the *Drawer* ſhould be adviſed thereof, upon penalty, that by neglect or delay the *Poſſeſſor* of the Bill, or the *Remitter*, ſhould looſe the liberty of ſeeking redreſs on the *Drawer*, as well as for neglect of proteſting for Non-Payment till it be too late.

XXIII. Every *Remitter* that remits not directly, but deſigns to draw in the remitted Sum again, either by himſelf, or others reſiding in other places, ought to ſend the *prima* Bill directly to the place where Acceptance muſt be demanded; and then, in caſe he order the accepted Bill to be left in the hands of the Perſon that demanded acceptance, he may endorſe the *ſecunda* Bill, but he muſt

not forget to adviſe in whoſe hands the accepted Bill remains, and of whom it muſt be demanded.

XXIV. When the *Remitter* ſends his Bill away to demand acceptance, he ought expreſly to order his Friend, whether he ſhall keep it by him, or return it to him again when accepted, or ſend it to any other Perſon; or, if he muſt keep it, whether he muſt deliver it to him that ſhall ſhew him the endorſed Bill.

XXV. A *Drawer* acts prudently when he fears or doubts whether his Bill will be accepted or no, that he recommend the ſame to ſome of his Correſpondents reſiding at the place where it ſhould be accepted and paid, to prevent the diſpect and diſhonour of his Bill; and if the Bill be made payable to order, he ought to give the *Remitter* notice to whom the *Poſſeſſor* ſhall addreſs himſelf, in caſe the Perſon on whom the Bill is drawn deny to honour and accept it.

XXVI. When a Bill is preſented for Acceptance, the *Acceptant* ſhould, before he declare whether he will accept or no, take ſpecial heed and care that the Bill preſented be of the ſame tenure with the Letter of Advice; for he that ſimply accepts a Bill muſt pay it, no exception being able to excuſe him afterwards.

XXVII.

XXVII. What is once accepted can no way be diſſanulled and made void; an *Acceptant* is obliged to the Payment, though he never had in his hands, nor peruſed the Bill, if it can be made appear that he in words accepted it; wherefore the *Acceptant* ſhould be careful, and accept no Bills but ſuch as he will pay.

XXVIII. As the *Acceptant* is free to accept, or not accept any *Bills*, for whoſe account ſoever offered, ſo its free for him to accept freely, or *ſupra* Proteſt ſimply, or with any limitation or condition.

XXIX. But a prudent *Poſſeſſor* of the Bill will accept of no conditional or limitative Acceptance, whereby either the Payment is prolonged or made difficult, or the tenure of the Bill any way altered, unleſs he have expreſs order from the *Drawer* and *Remitter* ſo to do, but will proteſt againſt the *Acceptant*, as if he had abſolutely refuſed to accept it; for whoever doth otherwiſe, and ſuffers himſelf to be ſatisfied with a conditional Acceptance, muſt run the *riſco*, and hazard himſelf.

XXX. If a Bill be drawn to *Thomas*, *John* and *Richard*, they not being Partners,

nor one any way obliged to another, every one muſt accept for his proportion, and for as much as he will pay, and ſo none of them are obliged in *ſolidum*, and the *Poſſeſſor* muſt be content with ſuch an Acceptance; but in caſe they altogether accept not for the full Sum, then he may and muſt proteſt againſt them all in particular, though one or two of them have accepted for their full Proportion.

XXXI. An *Acceptant* ſhould be careful, and not accept any Bills, not having advice thereof from the *Drawer*, or at leaſt, not accept any ſuch but *ſupra* Proteſt in honour of the *Drawer*, though he have order from a third Perſon, that if ſuch a Sum or greater be drawn for his account, to accept of it.

XXXII. Nor ſhould he accept *Bills* that are of a later date than the Letters of Advice he hath received from his Correſpondent the ſame Poſt; neither, in caſe the Letters do not mention nor confirm ſuch a Draught of ſuch a date, though the Letter of Advice be delivered him of the ſame date with the Draught, ſhould he accept thereof; for the Advice and the Bills ſhould punctually agree.

XXXIII. Nor ſhould he accept of any Bills ſubſcribed by any that pretend to have Order

Order and full Power from another, unleſs he know his Seal and Hand-writing, and the *Principal* hath given advice that he hath given Order and full Power to ſuch and ſuch a Perſon, for ſuch and ſuch ends.

XXXIV. He muſt alſo be careful in accepting any Bill, if he ſuſpect or believe that he hath accepted one of the ſame tenure, and for the ſame Sum, and muſt not accept of the laſt *Bill*, but under Proteſtation, that ſuch his Acceptance ſhall be void and null, if it be found that he hath accepted another of the ſame tenure, and for the ſame Sum.

XXXV. A Servant muſt be careful in accepting *Bills* that his Maſter draws upon him; for if he accept in his own Name, he obligeth himſelf Perſonally, as for his own Debt, and as if the *Bill* were for his own account, (though he do no buſineſs but his Maſters) but then the effects he hath of his Maſters in his hands are obliged for the ſame, for ſo far as they reach, and if they are not ſufficient, he muſt debit his Maſter for the reſt; wherefore let a Servant when he underwrites *Bills* for his Maſters accounts (accepted for his Maſters account) and then underwrite his own Name.

XXXVI. The uſual Formality that Ser-

vants uſe in accepting *Bills* of Exchange, *viz.* that he accepts of the Bill, as having Order and full Power from his Maſter to that end, who is the *Drawer*, will not excuſe him, if the Bill be made for his own account, but if the *Bill* be made for the account of his Maſter, and the Servant accept it on ſuch terms, then that Acceptance would not oblige him, but his Maſter only.

XXXVII. If any Factor or Correſpondent deſire his Principal or Correſpondent to draw a certain Sum of Moneys on him, and promiſe Acceptance of the ſaid Bills, but when the Bills come, refuſeth to accept and honour them, ſuch a Factor is not only a Knave, let his excuſes and pretences be what they will, but he ought to be obliged to accept the ſaid Bills, if they be according to his order, and not only make ſatisfaction for the loſs and charges, but alſo to the Drawer for the diſcredit done to his Reputation, and to be puniſhed ſeverely for his Knavery beſides.

XXXVIII. Marius's advice is, that if a Bill be drawn on two, or more, they ought all to accept, or upon refuſal, the Bill for want of due acceptance, muſt be proteſted.

XXXIX. But if a Bill be drawn on two or

or more, and it be thus expreſt, *To* A. B. *and* C. D. *or either of them*, its being accepted by either of them is ſufficient.

XL. If a Name in the Bill be mended or enterlin'd, the Merchant on whom its drawn doth not well if he accept ſuch a Bill, but if he doth accept it, he is obliged to pay it, and that a Name is mended or interlin'd, is no ſufficient excuſe nor legal warrant to refuſe the Payment when it falls due.

CHAP. XI.

Of Proteſting for Non-Acceptance.

Rule I.

IF a Bill be preſented for Acceptance, and the *Acceptant* refuſe abſolutely to accept it, then the Poſſeſſor of the Bill is obliged inſtantly without delay to make Proteſt for Non-Acceptance.

II. If the Acceptant cannot preſently declare whether he will accept or no, but promiſeth ſhortly to do it, or at the return of the next Poſt, then the Poſſeſſor of the Bill may without any Prejudice, at the requeſt of the

Acceptant wait ſome days, or till the next Poſt day, and need not proteſt, yet if he will not wait ſo long, he is not obliged thereto, but may if he will inſtantly proteſt, notwithſtanding the requeſt, pretences and excuſes of the Acceptant.

III. As the Acceptance of a Bill may be demanded by any Perſon whatſoever that hath the Bill in his hands, ſo alſo in caſe of Non-Acceptance, any Perſon whatſoever may proteſt, though his Name be not in the Bill, nor in the Endorſments.

IV. Proteſt is ordinarily made by a *Notary Publick* in the preſence of two credible *Witneſſes*, either in the preſence of the deſigned *Acceptant* himſelf in any place, or at his Houſe or Lodging where the *Notary Publick* ſhews the Bill, and demands Acceptance; and in caſe of refuſal, he proteſts for all Charges, Loſs and Intereſt, Exchange and Rechange, &c.

NB, At *Venice* all proteſts are made by the Servants of the *Colledge of Commerce*, and they are all particularly Regiſtered in a Book for that purpoſe, to which every Merchant hath free acceſs, which is a very commendable Order, for by this means many Bills (that otherwiſe would be returned proteſted) are accepted *ſupra* Proteſt in honour of

of the Drawer or Endorſer; and alſo, by this means is (many times) diſcovered the difference that the Merchants have of their Forreign Correſpondents, and in caſe of Proteſts for Non-Payment, their inſufficiency, or at leaſt, the baſeneſs of the Acceptant, which tends much to their advantage, whereby they can regulate their concerns the better; and ſuch an Order in all places of Exchange would be very profitable and advantagious to Commerce, as if here in *England* an *Office of Proteſts* were erected, and that none might make Proteſts but they that are authorized thereto, and that none might make full Powers, or Letters of Attourney to any to draw, or accept Bills in the Names of others, but they or their Order, and ſhould keep Regiſters thereof, to which every one ſhould have free acceſs; here alſo ſhould all full Powers given by any be revoked, and the time of the Revocation regiſtered; and here alſo may Acceptants ſee if any Bills of theirs made payable to order, be entred to be proteſted on the laſt day of Payment, for Non-Payment, and ſo come to know where the Bill is to be found, and who is the Poſſeſſor of it, and ſo prevent the Proteſting of it, under the pretence of the Acceptants having no order to make Payment, when the reaſon of the delay is, becauſe he knows not to whom to pay it: Theſe alſo may be ordered,

ordered, in caſe any Bills be proteſted for Non-Acceptance, that are redrawn and endorſed by others, *&c.* to give Advice thereof to the firſt *Remitter*, or the firſt *Drawer*, whereby many Inconveniences and much Loſs may be prevented.

V. If the Notary Publick meet the Acceptant, and he abſolutely refuſe to accept, then its uſual for the Notary to demand the Reaſons thereof, which Reaſons he is obliged to inſert in the Proteſt.

VI. If the deſigned Acceptant would not formally affront the *Drawer*, he may (and it is uſual) give ſuch Reaſons for his refuſal that tend leaſt to his diſcredit, of which the moſt uſual are, *Becauſe he hath no advice thereof*, or *He himſelf will adviſe the* Drawer *of the Reaſons*, or *For want of order from the third Perſon, for whoſe account the Bill is.*

VII. Its no lawful Excuſe to refuſe Acceptance becauſe the Bill is made payable to order, and is not endorſed, or becauſe the Acceptant will know before he accept, to whom it is payable.

VIII. Nor is it a lawful Excuſe to pretend, *That he hath accepted the other Bill, and that he will not accept two Bills for one Sum and Parcel*;

Parcel; for the Acceptance can be made with this condition, *That the ſame ſhall be of no effect if he have accepted one of the Bills already.*

IX. A Poſſeſſor of a Bill may proteſt againſt a limitted and conditional Acceptance, as alſo againſt an Acceptance without date and Subſcription of the Name of the Acceptant, as if the Acceptance had been abſolutely refuſed.

X. If an Acceptant make any Difficulties ſimply to accept the Bill, and the Poſſeſſor will accept of no conditional Acceptance, and therefore proteſts, and the Acceptant gives for Anſwer, *That he is ready and willing to accept the ſame for a longer time*, or *For a leſs Sum*, or with ſome other Conditions, he ſhould do well and prudently to add thereto, *On condition the Demander of Acceptance will inſtantly and preſently declare whether he will accept of ſuch an Acceptance or not; and in caſe he be ſilent to proteſt formally, that he will not be obliged to this Acceptance for the future.*

XI. If the Notary find not the Acceptant at Home, nor can meet with him in any other place, then he doth his buſineſs effectually, if he demand acceptance of the Acceptant's Wife, or of Father or Mother, Siſter or Brother, Man Servant or Maid Servant,

vant, or any other in the Houſe; and if none be at Home, if he relate the matter to any of his Neighbours, and expreſs the ſame at large in the Proteſt.

XII. If the Acceptant be abroad, and hath left no Order, nor given any full Power to any to accept the Bills that are drawn on him, then the Poſſeſſor of the Bill need not wait till his return Home, but muſt Proteſt for Non-Acceptance at the Houſe of the ſaid Acceptant, or at his Lodgings.

XIII. If the Acceptant is not known, nor can be found, then the Notary ought to go to the Poſt-houſe, or ſome other place where he can conveniently enquire of him; and if for all this he cannot find him, he muſt then proteſt, and inſert in the Proteſt how diligent he was to find him out.

XIV. If two Perſons of one and the ſame Name live in the ſame Town, and the Poſſeſſor knows not which of them the Bill is directed to, if they both refuſe Acceptance, he is obliged to proteſt againſt both.

XV. A Proteſt for Non-Acceptance need not neceſſarily be made at the place where the Bill is to be paid, but may be made at the place where the Acceptant lives, and in any

any place whatſoever where the Acceptant may be found.

XVI. In every Proteſt, either above or at the end thereof, or in the middle thereof, the *Bill of Exchange* that is proteſted, muſt be Tranſcribed and Copied, together with the Superſcription, and all the Endorſements (from word to word) if there be any, and it muſt be expreſt thus, that *This is the Copy of the Original Bill that is proteſted, whereof Acceptance was demanded, but refuſed*; and then what anſwer the Acceptant further gave to the Demanders of Acceptance.

XVII. *Marius* his advice is, Preſently upon the refuſal of Acceptance to enter the Proteſt, at leaſt, there is no neceſſity of giving three dayes, or one hours reſpit to conſider on't, whether the Accepter will reſolve to accept or no.

XVIII. Yet at the requeſt of a known honeſt Merchant ſome time may be given, provided the anſwer and reſolution whether he will accept or no, be given before the next Poſt (after the Receipt of the Bill) be ready to depart, that ſo the Poſſeſſor of the Bill may adviſe whether he hath proteſted or no.

XIX. If the Party that accepted the Bill dye

dye before it be due at the appointed time of Payment, the Poſſeſſor muſt make demand of his Executors, Adminiſtrators, *&c.* at the laſt dwelling Houſe of the Acceptant; and if they do not preſently pay, then muſt a Proteſt be entred, as you would have done if the Acceptant had been living.

XX. If the Party to whom payable ſhould dye before the Bill fall due, yet nevertheleſs the Moneys and Payment muſt be demanded at the time by one or other, and if the Party demanding in the Name of the deceaſed ſhall offer ſufficient Security to the Acceptant, and it be refuſed, Proteſt muſt be entred againſt him.

CHAP. XII.

Of Acceptance of Bills of Exchange ſupra *Proteſt.*

Rule I.

IF an Acceptant ſcruple to give Acceptance, for the account of him for whoſe account the Letter of Advice ſaith it is drawn; or if for want of advice, he know not for whoſe account it is drawn, then he may, if he look upon

upon the Drawer as ſufficient, accept the ſaid Bill *ſupra* Proteſt in honour of the *Drawer*, and for his account.

II. Though it is not uſual to make a formal Notarial Proteſt upon an Acceptance *ſupra* Proteſt, for want of advice, but only clearly to expreſs at the Acceptance, that it is *ſupra* Proteſt accepted, yet its better, and the Acceptant acts more prudently and ſafely, when he is not fully aſſured of the Sufficiency and Honeſty of the *Drawer*, that he cauſe the Bill to be formally proteſted, or at leaſt, that he cauſe a Notary Publick to obſerve and note, that the Acceptance is not ſimply given, but *ſupra* Proteſt.

III. When a Bill is made payable to order, and endorſed by a ſufficient man before acceptance be demanded, then if the *Acceptant* ſcruple to accept for the account of the *Drawer*, or for the account of him for whoſe account it is drawn, he may *ſupra* Proteſt accept it in honour of the Endorſer.

IV. When the *Acceptant* doth thus accept *ſupra* Proteſt in honour of the Endorſer, he muſt cauſe a formal Proteſt firſt to be made for Non-Acceptance, and is obliged without delay to ſend the ſaid Proteſt to the ſaid Endorſer for whoſe honour and account he hath accepted it.

V.

V. An acceptance *ſupra* Proteſt obligeth the Acceptant abſolutely to the Payment as much as if there had been no Proteſt, for its all one to the Poſſeſſor of the Bill, for whoſe account it be accepted, if it be accepted at all, and the Poſſeſſor hath his redreſs and remedy as ſufficiently as ever on all the Endorſers and Drawers, if the Payment be not punctually made at the day by the Acceptant.

VI. A Poſſeſſor of a Bill muſt be ſatisfied and contented with an acceptance *ſupra* Proteſt, (for it concerns not him in the leaſt whether the Acceptant give a ſimple acceptance, or an acceptance *ſupra* Proteſt, ſeeing the Acceptant muſt pay the Charges to the Notary Publick) except he had order from the Remitter, not to accept of ſuch an acceptance; and then in caſe of refuſal of a ſimple Acceptance, he muſt and may proteſt.

VII. When an Acceptant hath accepted a Bill *ſupra* Proteſt, and the Poſſeſſor of the Bill is not ſatisfied with it, and by the Notary Publick and Witneſſes, demands a ſimple Acceptance, or upon refuſal makes a Proteſt, then the Acceptant (if he be reſolved not to accept ſimply and freely) doth act prudently and wiſely if he renounce his Acceptance *ſupra* Proteſt, deſiring that it may be inſert-

ed

ed in the Proteſt, and be conſidered as void and of no effect, as if it had never been done.

VIII. No man, neither the Poſſeſſor nor the Demander of Acceptance, nor any third Perſon whatever, may accept a Bill of Exchange unleſs the Acceptant refuſe, or is not to be found, or hath left no order for the Acceptance.

IX. When the Acceptant will not accept at all, then the Poſſeſſor himſelf may, after he hath proteſted for Non-Acceptance, accept the ſame *ſupra* Proteſt.

X. This alſo may a third Perſon (that is not concerned in the Bill) do, whether the honour of the ſame Bill be recommended to him or not, and that neither in honour of the Drawer or any Endorſer, or of the Perſon for whoſe account it is drawn, *i. e.* he may accept *ſupra* Proteſt.

XI. An Acceptance *ſupra* Proteſt muſt be done in this manner; the Acceptant *ſupra* Proteſt, whoever he be, muſt perſonally appear before a Notary Publick and Witneſſes, (whether it be the ſame Notary that made the Proteſt or not, matters not) and there he muſt declare that he doth accept ſuch a pro-

teſted Bill in honour of the Drawer or Endorſer, &c. and that he will ſatisfie the ſame at the appointed time; and then he muſt write under the Bill with his own hand, *That he hath accepted it* ſupra *Proteſt in honour of ſuch and ſuch, &c.*

XII. An Acceptance *ſupra* Proteſt may be made ſo, that though it be in honour of the *Drawer*, yet it may alſo oblige the *Endorſers*, and in ſuch a caſe the Proteſt muſt be ſent to the Endorſer; but theſe too cautious Practices of ſome tend more to the diſcredit of the Drawer than to his honour.

XIII. A Poſſeſſor of a Bill is not obliged to accept of the Acceptance of a third Perſon *ſupra* Proteſt, whoſe ſufficiency he ſuſpects, ſeeing the *Drawer* is obliged to ſatisfie the *Remitter* in caſe of Non-acceptance; but if the third Perſon will offer ſufficient ſecurity for the Payment of the Bill, then the Poſſeſſor muſt be ſatisfied and contented therewith.

XIV. A Poſſeſſor of a Bill is not obliged to accept of the Acceptance of a third Perſon *ſupra* Proteſt in honour of any of the Endorſers, or of the Drawer, if the Acceptant *ſupra* Proteſt will re-draw the ſame on the Endorſer

Endorſer or Drawer, except he declare, that the honour of the Bill was recommended to him by the Endorſer or Drawer, or that he declare, that he hath Effects in his hands for the account of the Endorſer or Drawer, whereby he can ſatisfie the Bill without redrawing on either the Endorſer or Drawer. *NB*

XV. When the Poſſeſſor of a Bill hath accepted of the Acceptance of a third *ſupra Proteſt* in honour of the Drawer, then the Drawer is not in any wiſe obliged to give any further ſatisfaction to the Remitter. But if the Acceptance be made in honour of an Endorſer, then the Bill in reſpect of the Drawer is as abſolutely Proteſted, and he is oblieged to give Satisfaction, either to the Endorſer, in whoſe honour it was accepted, or to the Remitter, as if the Acceptance *ſupra Proteſt* had never been made.

XVI. When a Bill is for Non-acceptance Proteſted, and after *ſupra Proteſt* by a third Perſon accepted, &c. and the deſigned Acceptant afterwards gets further Advice and Order, and reſolves abſolutely to accept and pay the ſame, then the Acceptant *ſupra Proteſt* may ſuffer it, and yet the Poſſeſſor ſhall not be oblieged, to free

and acquit him from his Acceptance; but the firſt deſigned Acceptant is obliged to pay the Acceptant *ſupra Proteſt*, Proviſion and Charges, &c. becauſe by his acceptance *ſupra Proteſt*, he hindred the Bill from being returned with Proteſt.

XVII. Any Man that will may *ſupra Proteſt* accept a Proteſted Bill in honour of the Drawer, or any particular Endorſer, that was before accepted *ſupra Proteſt* in honour of ſome particular, but later Endorſer, and the firſt Acceptant is obliged to allow of the ſame, and yet remain obliged for his firſt acceptance, but the laſt Acceptant is obliged to pay and allow Proviſion and Charges to the firſt, for the Reaſon above: For inſtance, if there were three Endorſers, and one man accepts the Bill *ſupra Proteſt* in honour of the laſt, another may come and accept again in honour of the firſt or ſecond Endorſer.

XVIII. He whoever he be, that accepts a Bill *ſupra Proteſt*, puts himſelf abſolutely in the ſtead of the firſt deſigned Acceptant, and is obliged to make the Payment without any exception, and the Poſſeſſor hath the ſame Right and Law againſt ſuch a one, as he would have had againſt the firſt deſigned Acceptant, if he had accepted.

XIX.

XIX. He that accepts a Bill *ſupra Proteſt*, may lawfully demand a Recompence for the credit given to him, in whoſe honour he accepted, as well as Proviſion and Poſtidge, and other charges; and in caſe the Acceptant ſhould be forced to Re-draw the parcel on him for whoſe honour he accepted, he ought truly and faithfully without contradiction to accept and honour his ſaid Acceptants Bills, and return him Thanks for his Service.

XX. No Man ought to accept a Bill *ſupra Proteſt* in honour of the Drawer, unleſs he hath firſt ſpoken with the deſigned Acceptant, and known the Reaſons why he ſuffers it to be proteſted; but if the Acceptance be in honour of an Endorſer, this Information is to no purpoſe.

XXI. When a Bill is proteſted for Non-Acceptance, though the *Drawer* and his Hand-writing be never ſo well known, if the Perſon for whoſe account it was drawn be unknown, and cannot be found, then no man ought to be too free and liberal in accepting the ſame *ſupra* Proteſt in honour of the *Drawer*.

XXII. He that accepts a Bill *ſupra* Pro-

teſt in honour of any Endorſer, or of the Drawer, though it be without their knowledge or order, yet he hath his Redreſs and Remedy on the ſaid Perſon for whoſe honour he accepted (who is obliged to indemnifie him) as if he had full Orders ſo to do.

XXIII. If a Drawer or Endorſer, in whoſe honour a Bill is accepted *ſupra* Proteſt, return an Anſwer to the Acceptant *ſupra* Proteſt, and approves of the ſaid Acceptance, then the Acceptant may freely pay the Bill, without any further Proteſt for Non-Payment; but if the Perſons in whoſe honour the Bill was accepted are Quarrelſom, and pretend they gave no ſuch order to him, or if they anſwer not at all, then let the Acceptant *ſupra* Proteſt cauſe a formal Proteſt for Non-Payment to be drawn up againſt the firſt deſigned Acceptant; and if then the Notary return without Payment, and the Acceptant *ſupra* Proteſt be forced to pay the Bill, then he muſt order the Action, Right and Law of the Bill to be ended and tranſported fully to him, as if he were the true Poſſeſſor thereof, that ſo he may have his redreſs on the Drawer or Endorſer, in whoſe honour he accepted, or on any of the former Endorſers.

XXIV. He that accepts a Bill in honour of the

the Drawer, hath no remedy againſt any of the Endorſers, becauſe he only obligeth himſelf for the Drawer.

XXV. He that accepts in honour of an Endorſer, hath no advantage of any Endorſers that followed him for whoſe honour he accepted; but he and all that were before him, even to the Principal and firſt Drawer are all obliged to him, to make him ſatisfaction.

XXVI. When an Acceptant gets advice that a certain Sum is drawn upon him, and two firſt or two ſecond Bills of one and the ſame Contents, Date and Sum, but endorſed to be paid to ſeveral, be preſented, then let him accept neither of them, neither freely nor *ſupra* Proteſt; and if the one be accepted before the other be preſented, let him proteſt the latter, and not accept it *ſupra* Proteſt in honour of the Drawer, unleſs he hath Letters of Advice of each particular Bill from the Drawer.

CHAP. XIII.

What the Poſſeſſor of a Bill of Exchange proteſted for Non-Acceptance, and is not accepted ſupra *Proteſt, together with the Drawer and Endorſer, are obliged to.*

Rule I.

HE that hath proteſted a Bill for Non-Acceptance, whether he be the true and real Owner of the ſame, or only a third Perſon, to whom it is ſent to procure Acceptance, muſt (if it be not accepted *ſupra* Proteſt) adviſe the Perſon by whom it was given or ſent to him, for procuring Acceptance with the very firſt opportunity, and ſend or give to the ſame Perſon either the Proteſt alone, or both the Bill and the Proteſt.

II. If a Bill be made payable poſitively to ſuch a Perſon, and Acceptance is abſolutely denyed, then both the Bill and the Proteſt muſt be returned whence they came; but if Acceptance be delay'd, and not abſolutely denyed,

denyed, but hopes are given by the Acceptant that he will accept it the next Poſt, or very ſhortly, he expecting more ſufficient Orders and further Advice, and that then he may accept the proteſted Bill; then he that hath the Bill in Poſſeſſion muſt only return the Proteſt, and keep the Bill.

III. He that hath a Bill proteſted for Non-Acceptance, which is not payable to himſelf, nor endorſed to him, but is payable to the order of the Remitter, or the Drawer, &c. muſt only return the Proteſt, and muſt keep the Bill in his Poſſeſſion till it be demanded of him by him to whom it is payable, and on whom it is endorſed.

IV. If the Proteſt be not made in the preſence of the Acceptant himſelf, he being abſent, from home, or not to be found, then ought only the Proteſt to be returned, and the Bill muſt be detained till the day of payment, or till further order, that if the Acceptant be found, he may demand acceptance of him, and he may accept if he pleaſe; and in caſe of refuſal, its beſt and prudenteſt for the Poſſeſſor, or the Perſon that ſhould demand acceptance, to make another formal Proteſt againſt the ſaid Acceptant.

V. When a Bill made payable to order, that

that is not ſent to the Preſenter by the firſt Remitter, but by ſome other, is proteſted for non-acceptance, then the Preſenter doth act prudently, if the Bill be endorſed and drawn in from other places, if he not only ſend the Proteſt to the Perſon from whom he received the Bill, but alſo give Advice directly to the firſt Remitter of the Non-acceptance, and that it is therefore Proteſted.

NB, It would be very convenient and neceſſary, that it ſhould be ordered, that all Proteſts, either for Non-acceptance or Non-payment, as alſo in caſe of the failure of the Acceptant and his Inſolency, when the Preſenter cannot ſend the principal Act and Proteſt to the firſt Remitter, that then the Notaries ſhould be obliged to ſend a Copy of the ſaid Proteſt inſtantly and directly to the firſt *Remitter*, which might eaſily be done if ſome few *Notaries* were appointed to that Office, as is before obſerved in *Chap.* 11. and *Rule* 4. this would prevent much Damage and Loſs.

VI. The *Remitter* is obliged ſo ſoon as he receives advice of the Proteſt of the Bill to give advice thereof to the Drawer.

VII. A Drawer or Endorſer of a Bill is obliged not upon a ſimple advice, but ſo ſoon as

as the Proteſt is ſhewn to him, either with or without the Bill, to give ſufficient ſecurity for the Payment thereof at the time and place appointed, or elſe for the Principal and Charges and Rechange, in caſe it be not ſatisfied there.

VIII. When the Bill hath yet ſo much time remaining before the day of Payment come that the Drawer or Endorſer can order the Payment thereof at the place appointed at the day of Payment, then is the Remitter obliged, having got ſecurity to return the Bill, together with the Proteſt, to the place where Payment is to be made, there to demand Payment of the Acceptant, or to whom it was addreſſed and directed, and if he procure Payment, he muſt demand of the Acceptant no more than the Charges of the Proteſt and Poſtidge; but if he procure them not, he muſt again proteſt for Non-Payment, and then the Drawer is obliged to ſatisfie the Rechange and Charges.

IX. When a Bill drawn at long time, is proteſted for Non-Acceptance, and the Drawer hath given the Remitter ſufficient Security, then the Drawer is not obliged to cauſe his Bill to be accepted by the Acceptant or any other; for the Security for Acceptance is looked upon as if it were accepted.

X.

X. The Drawer or Endorſer give ſufficient ſecurity if they give to the Remitter other Bills payable to his order, for the ſame Sum, and due at the ſame time, that were drawn or endorſed by any Merchant that frequents the Exchange, and is by all men accounted ſufficient.

XI. The Remitter is not obliged to take ſuch Bills, unleſs the Drawer promiſe to pay the Charges and Poſtidge of the Proteſt, and if not all, yet at leaſt half Proviſion for this new trouble of the Correſpondent, and demanding Acceptance; but if the Drawer appoint any other at the time and place of Payment to ſatisfie his Bill *ſupra* Proteſt, and in the interim give ſufficient ſecurity, then he need allow no Proviſion at all, but only the Charges of the Proteſt and Poſtidge.

XII. The Drawer or Endorſer of a Bill proteſted for Non-Acceptance, muſt be very circumſpect, and muſt not give to the Remitter or Preſenter of the Bill any other Bills without the re-delivery of the firſt Bill and the Proteſt, or that the Remitter give ſufficient ſecurity for the Reſtitution thereof, or of the Value, in caſe the ſaid Bill ſhould be ſatisfied.

XIII.

XIII. The Remitter is not obliged, nor indeed is it adviſable for him to enter into ſuch an Obligation, becauſe the Drawer is obliged to procure Acceptance and Payment of his Bills by the Acceptant, or by ſome other, and theſe other Bills are but the ſecurity of the Remitter, which may alſo contain ſuch a clauſe and condition, that the Payment thereof ſhall only be made for the value of the Bills proteſted for Non-Acceptance, and were not *ſupra* Proteſt accepted.

XIV. When the Bill with the Proteſt is preſented to the Drawer, and theſe two can agree for the Rechange, then he may freely and ſafely diſſanul the Contract with the Remitter, and ſatisfie him upon the Delivery of the firſt Bills with the Proteſt.

XV. When a Bill is returned with Proteſt for Non-Acceptance, though there be yet ſufficient time for the ordering of the Payment, according to the tenure of the Bills, yet if the Drawer and Remitter agree to make the Bills and Contracts void, then the Rechange ſhould be equally adjuſted, and that thus it ſhould be reckoned at the Courſe that the beſt Bills on the Exchange were negotiated at, payable at the ſame time; and over and above this, the Remitter muſt demand

demand half Proviſion at leaſt, and Courtagie, together with the Charges of the Proteſt and Poſtidge.

NB, It were neceſſary, to prevent Diſputes and Contentions, that a certain Rule and Method were ordered for the regulating the Courſe of Re-changes, when there is occaſion for it.

XVI. When the *Drawer* and *Remitter* cannot agree about the Courſe of the Re-change, and the Drawer or Endorſer will not give any ſecurity for the ſame, but pay it in Moneys inſtantly, then it is ſufficient for the *Drawer* to return to the *Remitter* the value of the Bill that he received, and need not pay the Rechange till the day of Payment come, and they get advice in what courſe at ſight the Bills were made that Poſt or the next, and accordingly the *Drawer* is obliged to pay the *Remitter* how high or low ſoever it be, and the *Remitter* is obliged to be ſatisfied with it; but then in caſe the *Remitter* will neither at firſt (at the Payment of the value to him) nor at laſt (at the Payment of the Re-change) part with the Bills and Proteſt, the *Drawer* may ſo long detain his Moneys, till he give ſecurity for the Reſtitution thereof.

XVII. If all the Bills be not to be had, the

the Drawer muſt be very circumſpect in his making the contract void, & muſt not pay any Moneys but upon ſufficient Caution for the Re-delivery of the Bills and Proteſt, and for all the Damage and Loſs that may accrew thereby.

XVIII. When the time of Payment is ſo near that the Drawer or Endorſer cannot give other orders for the Payment of the Bills at the time and place appointed, then the Poſſeſſor or Remitter of the Bill are obliged upon ſufficient caution and ſecurity offered to them for the Re-change and Charges, &c. to wait till the day of Payment, and till the Courſe be known from the place where the Payment ſhould firſt have been made.

XIX. Though an Endorſer hath ſatisfied his Remitter for the Re-change and Charges of a Non-accepted proteſted Bill, yet the Drawer or an earlier Endorſer is not obliged to do the ſame, but may inſiſt upon giving ſecurity in manner and form as is above mentioned.

CHAP.

CHAP. XIV.

Of the time of Payment of Exchanges.

Rule I.

IT is ordinary and uſual in any place to make Bills of Exchange payable at a longer or ſhorer time, as the Parties can agree, no certain and fixed time being preſcribed.

II. But the Time muſt preciſely be agreed upon, and written in every Bill of Exchange, that the Drawer may certainly know when they fall due; and it were therefore to be wiſht that no Bills might be made payable after ſight or at ſight, and that a certain time might be limitted, in which the Acceptance is to be demanded, upon a penalty that the Preſenter of the Bill, in caſe of the refuſal of Acceptance, might have no Redreſs upon the Drawer.

III. The time of Payment is conditioned and agreed on betwixt the Drawer and Remitter, ſometimes (*1ſt*,) on a certain fixed and appointed day, (*2dly*,) at ſight or after ſight,

ſight, (*3dly,*) at ſome Dayes, or Weeks, or Moneths after the date, (*4thly,*) at Uſance, half Uſance, Uſance and half, double and trebble Uſance, *&c.*

IV. A Bill made payable at a certain day is underſtood to be payable on that ſame day when it comes, that it falls due on, according to the Stile of the place where the Payment is to be made; ſo that a Bill made at *Amſterdam* payable at *London* or *Hambrough* the laſt of *November*, is not payable till the laſt of *November*, according to the *Old Stile*, which is the account of time that they obſerve in thoſe places; and on the contrary, a Bill made at *London* or *Hambrough* payable at *Amſterdam* the laſt of *November*, is payable at *Amſterdam* the laſt of *November*, according to the *New Stile*, which is the account of time that they obſerve there.

V. When a Bill ſays ſimply [*Pay*] without any mention of any time, then its to be underſtood that the time of preſenting the Bill is the time of Payment, and that the Payment muſt be made at ſight.

VI. If Bills be made payable at ſome days, &c. after ſight, or after date, then for reckoning the time of Payment, the firſt day after the ſight, or after the date, is reckoned

the firſt day, and not the day whereon it was preſented, with which *Marius* alſo agrees.

VII. To reckon out the preciſe time of the Payment of any Bill payable at any time after date, its neceſſary to know the difference of the *Old* and *New Stile*, if the places from whence is drawn, and on which is drawn obſerve a different Stile. For better Information herein, theſe following places obſerve the *New Stile*.

Amſterdam, *Dordrecht*, *Harlaem*, *Leyden*, *Rotterdam*, and all the *United Provinces* of *Holland*, as alſo *Middlebrough*, *Vliſſingen* in *Zealand*, *Antwerp*, *Brugge*, *Dornick*, *Gent*, *Ryſſel*, *Bruſſels*, *Valentan*, and all *Braband*, *Flanders* and *Artois*, *Bordeaux*, *Lyons*, *Marſellers*, *Nants*, *Paris*, *Roan*, *Rochelle*, and all *France*, *Leſſabon*, *St Hubes*, *Port a Port*, and all *Portugal*, *Alicant*, *Bayone*, *Bilboa*, *Cadix*, *Madrid*, *Mallega*, *St Sebaſtian*, *Sebilien*, *Valence*, and all *Spain*, *Meſſina*, *Palermo* in *Sicilia*, *Bari*, *Bargamo*, *Biſanſone*, *Bolognien*, *Florense*, *Genona*, *Lyborne*, *Lucca*, *Mantua*, *Milan*, *Naples*, *Rome*, *Venice*, and all *Italy*, *Auſburge*, *Crembes*, *Lints*, *Wien*, and ſeveral places of the Empire, *Bolzano* in *Tyrol*, *Breſſlaw*, and all *Sileſia*, *Colne*, *Dantzick*, *Koniſburge*, *Thorne*, and all *Poland*, *&c.*

Theſe

Theſe Places keep the *Old Stile*, *England*, *Scotland* and *Ireland*, *Archangle* in *Muſcovia*, *Berline*, and all *Brandenburge*, *Copenhagen*, and all *Denmark*, *Embden*, and all *Eaſt-Friezland*, *Frankford* on the main, *Geneva*, and the *Proteſtant Cantons* of *Switzerland*, *Hambrough*, and all *Holſteyn*, *Lubeck*, and all *Macklinbrough*, *Leypſig*, *Magdeburgh*, *Naumbrough*, and all *Saxonia*, *Riga*, and all *Liefland*, *Stockholme*, and all *Sweeden*, *Straſburge*, and all tho *Elſas*, *&c.* All the *Popiſh Electors* and *Princes* of *Germany* obſerve the *New*, and all the *Evangelical Electors* and *Princes* they continue ſtill the *Old Stile*.

VIII. If a Bill be made payable at ſome Weeks after ſight or date, then the Weeks muſt firſt be reduced into Dayes, and ſeven Dayes reckoned for a Week, and in accounting, the days of the *Almanack* muſt be followed, taking the firſt day after the ſight or date for the firſt day, and ſo forward one day after another, without excluding either *Sundayes* or *Holy-dayes*, and the laſt day is the day of Payment, whether in the beginning or the middle of the Week.

IX. If a Bill be made payable a Moneth or two after date, or after ſight, then the day of Payment falls on the ſame day of the following Moneth, &c. that the Bill was pre-

ſented or dated, and if the Moneth it is to be paid in hath not ſo many dayes as the Moneth that the Bill was dated in or ſhown had, then the day of payment falls on the laſt day of the Moneth. As for *Example:* A Bill is dated the 7th of *January*, and is payable a Moneth after date, this Bill is payable the 7th of *February* (not the 8th) A Bill dated the 30th of *January*, payable a Moneth after date, this Bill is payable on the 28th or 29th of *February*, being the laſt day of the Moneth; and ſo in Bills payable a Moneth or two after ſight, if preſented on the 30th of *January*, are payable on the laſt of *February*, though *February* hath not ſo many dayes in it.

X. A Bill dated according to the *Old Stile*, payable a Moneth after date in a place where the *New Stile* is obſerved, does not alwayes fall due a Moneth after the date *Old Stile*, but a Moneth after the date according as there the *New Stile* was writ at the date of the Bill, and *contra*. For *Example*; A Bill dated the the 25th of *April* in *London*, according to the *Old Stile*, payable a Moneth after date in *Amſterdam* where the *New Stile* is writ, does not fall due at *Amſterdam* the 25th of *May* according to the *Old Stile*, which is the 4th of *June* according to the *New Stile*, but on the 5th of *June*; for when the Bill was dated the 25th of *April Old Stile*, it was the 5th of *May*

May New Stile, and from that time muſt the Moneth be reckoned, &c. and *contra*, this muſt be well obſerved, ſeeing in the Leap-years this makes two dayes difference, in other years three dayes.

XI. In the calculating the time of Payment of Bills payable at Uſance, ſometimes Uſance is taken for ſome certain time after the date of the Bill, ſometimes for ſome certain time after ſight, nor is this in all places alike, wherefore it muſt be obſerved that,

Uſance from *Venice*, *Geneva*, *Liborno*, all *Italy*, *Spain* and *Portugal*, to *Amſterdam*, is two Moneths after the date.

Uſance from *Paris*, and all *France*, *London*, and all *England*, *Scotland* and *Ireland*, from *Antwerp*, and all *Flanders*, and *Brabant*, from *Middleburge*, *Rotterdam*, &c. is one Moneth after date, double Uſance two Moneths, half Uſance fifteen dayes, whether the Moneth hath but twenty eight dayes in it, or thirty one dayes.

Uſance from *Dantzicke* and *Konigsburge* is one Moneth after ſight, and double Uſance two Moneths, and half Uſance fifteen days, i. e. at *Amſterdam*. But now Exchanges from *Dantzicke* and *Konigsburge* are ſeldom made at Uſance, but ordinarily from *Dantzicke* at forty dayes date, or after date, and

from *Konigsburge* at forty one dayes after date, i. e. at *Amſterdam* payable.

Uſance from *Neurenburge*, *Ausburge*, *Wien*, *Franckford*, and other places in *Germany*, is at *Amſterdam* fourteen dayes after ſight, half Uſance ſeven dayes, double Uſance twenty eight dayes, which is four Weeks, and not an Almanack Moneth.

On the Contrary.

Uſance from *Amſterdam* to *Italy*, *Spain*, *Portugal*, is two Moneths after date, to *England*, *Flanders*, *Brabant*, &c. one Moneth, to *Paris*, according to the new Royal Order, thirty dayes after date, to *Ausburge*, &c. fourteen dayes, to *Breſlaw* fourteen dayes, &c.

Uſance at *London* from *Amſterdam*, *Rotterdam*, *Antwerp*, one Moneth, from *Venice* three Moneths; From *Hambrough* to *London*, and from *London* to *Hambrough* two Moneths after date, i. e. double Uſance, but Bills are commonly given at double Uſance.

XII. A Bill dated the 28th of *February*, payable a Moneth after date, or at Uſance (and Uſance is reckoned there for a Moneth after ſight) and is preſented for acceptance the 28th of *February*, then it falls due the 28th of *March*; but if it be dated *ultimo February*, then its not due till the *ultimo March*, and

and ſo in *June* and *July*, the one having thirty dayes, the other thirty one, and this the Acceptant may alter if he pleaſe, if for the 30th of *June* he write *ultimo*, it will not be due till *ultimo July*.

XIII. In exchanging, the circumſpect Remitter will have a regard to the Time, and accordingly take his meaſures, and keep his Moneys till ſuch a time as he knows there will be great occaſion for it at the Place where he is, or remit it to ſuch a place to be remitted again, ſo alſo the Drawer muſt obſerve to take ſuch an opportunity to draw in his Moneys, when he knows there is Moneys enough ſtirring; for multitude of Bills and ſcarcity of Moneys advances the Courſe and paucity of Bills; and multitude of Moneys depreſſeth the Courſe of the Exchange in any place.

XIV. An Exchanger ſhould know in the places where Banks are kept, the ordinary times when the Banks are ſhut, for the making of new Books, and when they will again be opened; for at ſuch a time there may be ſome Advantage for the Drawer and Remitter.

XV. When there is Difference ariſing betwixt the Poſſeſſor or Preſenter of the

Bill about Calculating the Time of its payment, i. e. the preciſe Day, the Poſſeſſor or Preſenter, if circumſpect, will demand Payment on the Day according to his own Calculation, and if on the laſt day of Reſpit he procure not Payment, he ſhould and may Proteſt, and ſend the ſame away, but he muſt detain the Bill till the day of payment, according to the Calculation of the Acceptant; and then if he procure not Payment, he muſt *de Novo* Proteſt.

XVI. *B*ills made payable at two or three dayes ſight, or at ſight ſhould not have the priviledge of the reſpit dayes, (eſpecially if they be five or ſix, or more) but ſhould be paid within twenty four Hours, after the day they fall due, or be proteſted, becauſe the reaſon why *B*ills are made payable at ſuch ſhort ſight, is becauſe the *Remitter* hath preſent occaſion for his Moneys.

CHAP.

CHAP. XV.

Of Demanding of Payment.

Rule I.

THe *Poſſeſſor* of a *Bill* muſt be careful that the ſame be ſent to the place where payment muſt be made timouſly enough, that payment at the day of payment may be demanded; and leſt the *Poſt* ſhould be uncertain, or be detained any way, he muſt never keep a *Bill* till the laſt Moment, leſt before its arrival the day of payment be paſt, and reſpit dayes expired; for if not demanded in time, a Proteſt is afterwards inſignificant as to recover any thing of the Drawer.

II. The *Poſſeſſor* of a *Bill* is obliged, at the day of its becoming due, to demand the Moneys, and muſt not give or admit of any delays more than the reſpit dayes.

III. He that takes a *Bill* from another to demand ſatisfaction, whether he be a Merchant, Chaſhier, *&c.* and neglects to demand it at the day of payment, and is not urgent for the ſame within the days of reſpit, but

but lets them paſs without proteſting, is obliged to make good the Damage that may accrue thereby.

IV. He that hath a *Bill* in poſſeſſion, which ſays only [*Pay*] without mentioning the time when, or that is not dated, or that is not clearly and legibly enough written, payable ſome time after date, *&c.* ſo that the certain preciſe time of payment cannot be calculated, muſt be very circumſpect, and demand the Moneys at any time when he can probably make it appear, or ſeem to be become due.

V. He that hath a *Bill* ſent him to demand Acceptance, and to keep the ſame by him till it be demanded by him who ſhall produce the endorſed *Bill*, if the ſame endorſed *Bill* is not produced at the laſt day of the reſpit, nor demanded of him, then he may demand of the Acceptant payment thereof, offering caution and ſecurity for the producing the endorſed *Bill*, and in caſe of refuſal he may proteſt for Non-payment, and ſuch a Proteſt is of validity againſt the Drawer; but yet if he that hath the *Bill* hath neglected to demand and to proteſt, he is not blameable for ſo doing, nor any way reſponſible, but the Detainer of the endorſed *Bill* may thank himſelf for his careleſneſs.

VI.

VI. If a Bill be not endorſed, or the Endorſement not right made, or if there want any thing in it, yet notwithſtanding the Poſſeſſor of the Bill is allowed to demand payment, and the Acceptant is obliged to pay him upon the Delivery of both the Bills, if he will under his Hand and Seal oblige himſelf to procure a third Bill for the ſame Sum rightly and truly endorſed.

VII. Becauſe many times an Acceptant knows not to whom his Bills are payable, when they are made payable to order, therefore the Poſſeſſor of the Bill is obliged to give the Acceptant timely notice; and its the Cuſtom at *Amſterdam* among Merchants that are of Repute and Credit, and that truſt one another, that the Poſſeſſor of a *Bill* made payable to order, and to be paid in *Bank*, at the day of payment to ſend the accepted and endorſed *Bill* to the Houſe of the Acceptant, and deſire him to order that the Value be write of in *Bank*; but according to a ſpecial Order of the City of *Amſterdam* no Poſſeſſors of endorſed Bills are obliged to give them out of their hands, unleſs they be already ſatisfied; and tne *Poſſeſſors* muſt on the day of payment declare to the *Acceptants* that they are to have the payment by virtue of the Endorſements, and in caſe of refuſal

to pay then before the delivery of the *Bills*, then the *Poſſeſſor* muſt bring the *Bill* to one of the *Book-keepers* in the *Bank*, there to be Regiſtered, whence the *Acceptant* muſt fetch them, after he hath ordered the Parcel to be writ of to the *Poſſeſſors* account, and not before, &c.

VIII. A *Poſſeſſor* of *Bill* payable in currant Moneys, either to himſelf directly, or to order, is not obliged to part with his *Bill* before he be effectually ſatisfied; and if he ſuſpect the *Acceptant*, he muſt not exchange his *Bill* for an Aſſignation, whether on a Caſhier or ſome elſe, and may with good reaſon detain the *Bill*, till the Aſſignation be ſatisfied, in caſe he will write on the *Bill* that he hath received from the *Acceptant* an Aſſignation for ſuch a Sum, on ſuch and ſuch a *Perſon*.

IX. In the demanding of *Payment*, eſpecially as well as in the whole Trade of Exchange, Equity, Credit and Honeſty muſt be obſerved and encouraged: But Cheats and Knaves ſhould be ſeverely puniſh't, ſuch as *J. Snaw*, *R. Shaw*, *Joſeph Fernley*, &c.

CHAP.

CHAP. XVI.

Of the Payment of Bills by the Acceptant.

Rule I.

BIlls muſt be punctually paid, according to their Tenure and Contents, yet (in reſpect of the time when, and the Moneys wherewith) in ſuch manner as is uſual and ordinary at the place where they are to be paid, unleſs there be ſome certain expreſs Condition in the *Bills* to the contrary.

II. The payment of a *Bill* muſt be made to the true and lawful *Poſſeſſor* of it; wherefore *Acceptants* in the payment of their *Bills* muſt be careful and circumſpect, leſt paying it to others they be forced to pay twice.

III. If payment be demanded by any the *Acceptant* knows not, and ſcruples whether he be the true and lawful Owner of the *Bill*, and the *Poſſeſſor* thereof cannot demonſtrate that he is the Man to whom it is made payable, either originally, or by the Endorſements, becauſe he may be a Stranger, and hath

hath no Acquaintance, then its moſt adviſable for the Acceptant to delay and defer the *Payment* till the laſt day, if peradventure ſome other in the mean time may not demand it.

IV. No *Bill* muſt be paid before it become due; if it be paid before, the *Acceptant* runs the hazard and danger that may enſue; Yet this doth not hinder, but that if a *Bill* be made payable to order, it may be Negotiated and Endorſed; but however the *Acceptant* muſt not pay before the ſame become due.

V. When a *Bill* is accepted, that is made payable to a certain Nominated *Perſon*, if the ſaid *Perſon* deſire the *Acceptant* to pay it to any other, and he promiſe to do it, he is obliged thereto, whether the *Poſſeſſor* ſhould in the interim fail or not; from whence appears that the *Poſſeſſor* of a *Bill* is the true Owner. So *Marius* alſo ſayes, *The Remitter may countermand and forbid the payment to him that firſt had the Order.*

VI. When a *Bill* is made payable to a certain nominated *Perſon*, he for whoſe account the *Bill* was remitted, (i. e. the *Remitter*) as the principal Owner and true Proprietor of the *Bill*, may Revoke his Order, and cauſe

cauſe it to be paid to another, if his order come before it be paid, and the *Acceptant* is obliged in ſuch a caſe, to depoſit the Moneys in other Hands, till ſuch time as it ſhall be made appear who of right ought to receive it; or if he hath order from the *Remitter* he may ſuffer the *Bill* to be proteſted for Non-payment: But when a *Bill* is made payable to Order, then the *Remitter* makes him, to whoſe Order it is payable, ſole-maſter of the *Bill*, who hath Power and Authority to diſpoſe of it as he will, and the *Acceptant* muſt pay it to his Order.

VII. Bills that are payable at ſuch a Preciſe day, as on the laſt of *June*, &c. are paid the ſame Day by thoſe that are punctual; but if their Day of becoming due be calculated according to Uſance, or after the date or ſight, then the Payment is not uſually made till the day after; but yet the Payment may be made the very ſame Day, without any the leaſt Prejudice to the Payer.

VIII. Bills payable at ſight, or two or three dayes after, may be paid preſently ſo ſoon as preſented, without any Prejudice to the *Payer*; whereas it may be a great Prejudice to the *Poſſeſſor* of the Bill, to ſtay for the Moneys till the Reſpit dayes be expired.

IX.

IX. All Bills muſt preciſely and punctually be paid within the dayes of Reſpit, after the day of their becoming due: Theſe dayes of Reſpit, are in ſome places more, in ſome fewer, and are introduced by Cuſtom, or ordered by the Magiſtrates; and any *Poſſeſſor* of a *Bill* may ſafely, without any prejudice, wait till the laſt of theſe days, without proteſting for Non-payment, yea, is obliged to wait ſo long.

X. At *Amſterdam* ſix Reſpit dayes are allowed, after the day of the Bills becoming due, incluſive of all *Holy-dayes* and *Sundayes*, &c. and if the payment be made on the ſixth day by the *Acceptant*, its accounted good and punctual payment, wherewith the *Poſſeſſor* muſt be ſatisfied; and if the Bill be payable in Bank, and the ſix dayes of Reſpit are not fully expired before the ſhutting of the Bank (in order for the making of new Books) then the *Acceptant* may defer the payment till the third day after the opening of the Bank again, and ſo in caſe the Bill fall due when the Bank is ſhut; and all this time the *Poſſeſſor* of the Bill can make no *Proteſt*, nor will his not making *Proteſt* be any prejudice to him.

NB, at *Rotterdam*, *Middlebrough* and *Antwerp* are alſo (including the *Holy-dayes* and *Sundayes*)

Sundayes) ſix Reſpit dayes allowed: But Bills at ſight muſt be paid within twenty four Hours.

But at *Colne*, *Breſlaw*, *Newrenbrough* and *Venice* the *Sundayes* and *Holy-dayes* are not included in the ſix Reſpit dayes allowed after the day of the Bills becoming due.

In ſome places fewer Reſpit dayes are allowed, as at *London* three dayes, and no more: At *Frankford*, out of the Fair time, four dayes: At *Leipzicke* out of Fair time, five dayes; and at *Ausburge* five; and in theſe places all Bills payable at ſight muſt be paid within twenty four Hours.

Other places have more Reſpit dayes allowed, as *Naples* eight, *Dantzick* and *Konigsbrough* ten, *Paris*, *Roan*, *Rochel*, *Nants* *Bordeaux* ten, and all *France*. But in theſe laſt, the day of the Bills becoming due is reckoned for the firſt of the ten, *Sundayes* and *Holy-dayes* are included: *Hambrough* allows twelve dayes, including the day of its becoming due, and in regerd no Proteſts can be made there on *Sundayes* or *Holy-dayes*, if the twelfth dayfall on either, the Proteſt may be deferred till the next: *Stockholme* allows alſo twelve dayes, *Genua* thirty dayes, and all *Spain* fourteen dayes. But in *Italy* are no dayes at all agreed upon, but the *Poſſeſſor* of the Bill may Proteſt or not Proteſt according to his diſcretion.

XI. All Bills of three hundred Guilders *Flemiſh*, and above, muſt be paid in Bank at *Amſterdam*, notwithſtanding any conditions to the contrary, upon pain of forfeiture of twenty five Guilders, and the Bill to be accounted unſatisfied.

XII. Where a Bank is erected, there all *Bills* whatever ought to be paid in Bank, whether for greater or leſſer Sums, or for what Species ſoever they are.

NB, By reaſon of the difference of Currant and Bank Moneys, this is ſcarce Practicable at *Amſterdam*, or in any other place where ſuch a difference is, unleſs a Bank Currant were erected alſo, which might be very advantagious every way: But I refer the Readers herein to the Author, and proceed.

XIII. *Bills* that are payable to any certain nominated Perſon that hath an account in Bank, are ordinarily ſatisfied without demanding the *Bills*, ſeeing the payment thereof does alwayes in Bank remain upon Record.

XIV. The falling or riſing of the *Aggio* of Bank Moneys is to the profit or loſs of the Poſſeſſor of the Bill; for the Bills payable in Bank

Bank muſt be paid by the Acceptant, let the *Aggio* run as high as it will; and he is obliged to pay no more than the Bill requires, let it run as low as every it can.

XV. Bills payable in currant Moneys out of Bank, muſt be paid in large (Groſs) Moneys, and not in ſmall pieces, as *Stivers*, *&c.*

XVI. The riſing or falling of Moneys where the Bill is payable in currant Moneys is alſo at the hazard of the Poſſeſſor of the Bill, as in *Rule* 14.

XVII. The Acceptant muſt pay no Moneys upon the ſimple advice of the Drawer, though it be expreſly ſaid to be payable to a certain Perſon, unleſs the Bill alſo be preſented, and he hath accepted it.

XVIII. A Bill payable to order muſt not be paid to any, but to whom it appears by the Endorſement that it is payable.

XIX. An Acceptant may pay to him to whom the unaccepted Bill is endorſed, though the accepted Bill be not endorſed to him; but then both the accepted and the endorſed Bills muſt be delivered to him, and

he muſt look well, and ſee that the accepted Bill be endorſed to no other.

XX. If a Bill be made payable to *A. B.* or order, a circumſpect Acceptant will not directly write it of in Bank to *A. B.* till it appear that he is ſtill the Poſſeſſor of the Bill, and *A. B.* is obliged at his requeſt to endorſe the Bill upon himſelf, and to write, *The Contents hereof pleaſe to write to my account in Bank, &c.*

XXI. When a Bill payable to order is endorſed by divers, and the Acceptant will at the time pay it in Bank, then let him obſerve, that in his Aſſignation for the writing it of in Bank, he order the Payment to the Preſenter, or to him that endorſed it laſt, for him to whoſe order it is payable. As for Example: A Bill payable to the order of *D.* is endorſed by *D.* to the order of *E.* by *E.* to the order of *F.* by *F.* to the order of *G.* *G.* demands payment, let him then aſſign *G.* for *D*'s account, who is obliged for all the Endorſers, and is thereby ſatisfied, as being made payable to his order.

XXII. A circumſpect Acceptant will pay no Bill that is made payable to order, but upon the delivery of the accepted *Bill.*

XXIII.

XXIII. When a *Bill* payable to order is not accepted by him that was to accept, nor any other, he may notwithſtanding pay it at the time appointed to him that ſhall preſent the *prima* or *ſecunda* Bill, if endorſed upon him, and having ſatisfied the one, he is not obliged to ſatisfie the other, though it be made payable to another, or endorſed upon another.

XXIV. If at the day appointed payment be demanded for two *prima* and two *ſecunda* Bills, both of one Sum, Date, and to the ſame Preſenter, Poſſeſſor or Order, and payable at the ſame time, and the Acceptant hath only advice from the Drawer, that he drew but one Sum of him; if neither of the *Bills* be accepted, then he muſt be circumſpect in the paying, and may, if they both be in one hand, ſatisfie the one, and receive the *Bills*; but if they be in two different hands, or endorſed to two ſeveral Perſons, then its better to ſuffer both to be proteſted, and muſt upon no account ſatisfie either of them, but upon ſufficient ſecurity for the Reſtitution of the Sum that he pays, if it be wrong, together with the Re-change and Charges.

XXV. Though a Bill be made preciſely payable to a certain Perſon, yet without any

Prejudice the ſame may be paid to the order of that Perſon.

XXVI. An Acceptant muſt be careful in paying a Bill that is payable to divers and ſeveral Perſons, and muſt not pay the ſame but to them all, or to the order of them all.

XXVII. No Bill can be diſcounted, or otherwiſe ſatisfied than in Moneys, without the voluntary conſent of the Poſſeſſor.

XXVIII. An Acceptant is not ſimply obliged at the day of Payment to pay the Bill he hath accepted to the Preſenter thereof, though it be made payable to order, unleſs it be endorſed to him; and in caſe any thing material in the Endorſement be awanting, he may demand ſufficient ſecurity of the Poſſeſſor or Preſenter, That none afterwards ſhall demand the ſame; or he may cauſe the ſame to be writ of in *Bank* to the account of him who ſhall afterwards produce the Bill with the formal Endorſements, or do any thing that is equivalent to this.

XXIX. He that hath accepted a *Bill* under any Limitation or Condition, is not obliged otherwiſe to ſatisfie it, than according to that Condition and Limitation.

XXX.

XXX. He that hath accepted a *Bill* under Proteſt, that he ſuppoſeth he hath already accepted one of the ſame Contents, and for the ſame Sum, and that in caſe it be found ſo, he declares, that this Acceptance ſhall be null and void, he is not obliged for the payment, unleſs the other *Bill* that he accepted before for the ſame ſum, &c. be delivered to him, and that ſufficient Security be given, that none ſhall demand any more by virtue thereof.

XXXI. Marius his advice is, never to part with the *Bill* of Exchange till it be paid, not to deliver it up upon an Aſſignation, or any other *Bill* or *Bond*, but firſt receive his Moneys by Aſſignment before he give in his *Bill*, and the reaſon is this; *In caſe I do not inſtantly receive the Moneys upon the aſſignment, if I have parted with my Bill, I cannot eaſily form a Proteſt.*

XXXII. Further he aſſerts, that though the dayes of Reſpit be expired, yet a Proteſt may be entred, and the day on which it falls due, is accounted part of the Time limitted by it: But its beſt, he ſayes, to proteſt within the three dayes of Reſpit (*viz.* only three dayes being allowed at *London*) but after it muſt alſo be proteſted, becauſe

without this there is no further courſe at Law can be taken, either with the Acceptant or the Drawer.

XXXIII. If a *Bill* be made poſitively payable to ſuch a Man, and not to ſuch a Man or his Order, then an aſſignment of the *Bill* will not ſerve the turn, but the Moneys in the ſtrictneſs of the Letter muſt be paid immediately to that ſame Man, and no other, elſe the Accepter may be forced to pay it twice; nor is it ſufficient that ſuch a Man write his Name in a Blank on the back-ſide of the Bill, unleſs the man himſelf appear in Perſon.

XXXIV. Every Promiſe of Payment in Bank is accounted for good and ſufficient Payment.

XXXV. To Diſcount or to Reſcounter is good and ſufficient payment, if it be of a due and liqued Debt.

XXXVI. An Acceptant may after payment at the time, according to the tenure of the *Bill*, and if the Poſſeſſor will not receive it, nor diſcharge upon it, the Acceptant may depoſit it; and then though the *Poſſeſſor* Proteſt, the *Drawer* ſhall have no damage.

CHAP.

CHAP. XVII.

Of Proteſting of Bills for Non-Payment.

Rule I.

THough the Acceptant be abſolutely obliged to the payment of thoſe Bills that he accepts; yet at the day of payment, the Payment cannot be demaned or exacted with Rigor, if the Drawer or Endorſers be ſufficient, and his Credit untainted: but the Poſſeſſor muſt firſt try if he can procure the Value, the Charges and the Re-change from the firſt Drawer or Endorſer peaceably and quietly.

II. The Poſſeſſor hath no redreſs on the Drawer or Endorſer, unleſs he can make it appear that he made diligent Demands of payment before the Reſpit dayes were expired, and could procure none, and therefore did proteſt for Re-change and Charges within the limitted time.

III. In all (or moſt) Towns of Trade, its ordered as a Law, in how many dayes after the *Bill* become due, the Proteſt muſt be

be entred and made, in caſe the Poſſeſſor will not forfeit his Right againſt the Drawer or Endorſer.

IV. Before any man can proteſt for Non-payment, demand of payment in the limitted time muſt be made, and that firſt ſimply by the Poſſeſſor himſelf or his Servant, or ſome other in his Name, and then if payment do not punctually follow upon theſe Demands, he muſt ſolemnly demand it by the Notary Publick and two Witneſſes.

V. This formal and ſolemn demanding of payment muſt at fartheſt be on the laſt of the Reſpit dayes, and that ſo timouſly (if it muſt be done in *Bank*) that the Acceptant may have ſufficient time to order it.

VI. When the laſt Reſpit day falls on a *Sunday* or *Holy-day*, then its ſafeſt to proteſt the day before.

VII. Payment of *Bills* that were not accepted neither ſimply nor *ſupra* Proteſt, may be demanded at the day of payment, and if payment be denyed, then a new Proteſt may immediately be entred for Non-payment, and both the *Bill* and *Proteſt* may be returned.

VIII.

VIII. When a Bill that is made payable after date, or at a certain day, is not preſented for acceptance till after the ſame become due; then if payment be denyed, the Proteſt for Non-payment muſt be made on the laſt Reſpit day at fartheſt (after it became due) and not after it was firſt preſented.

IX. A punctual Payer will diſcharge his Bills on the ſecond or third day after they are become due, and they are but Botchers that defer till the laſt reſpit day, under pretence that the laſt Reſpit day is the true day of Payment; whereas theſe Reſpit dayes are allowed the Acceptant not for Wantonneſs, but for Conveniency as well of the Poſſeſſor as the Acceptant himſelf, that the one may demand in time, and the other provide in time to diſcharge his Bills; yet the Acceptant may if he will defer and delay it till the laſt day.

X. If the Poſſeſſor of a Bill proteſt not till after the laſt reſpit day, he loſeth his Right of having Redreſs on the Drawer or Endorſer by his negligence, except in the caſe of the ſhutting the *Bank*.

NB, The caſe ſeems to be very hard when the Bill by any Miſcarriage of the Poſt, or other Impediment is detained ſo long (or it may

may be wholly loſt) till the reſpit dayes are expired, and then the deſigned Acceptant refuſeth either to accept or pay: and what is then to be done? its hard that the Remitter ſhould loſe his Moneys, and loſe it he muſt, if the Drawer or Acceptant be Knaviſh; for he can in no wiſe lay any Action againſt either of them, and yet it is manifeſt there is a Debt owing to him; this then being too great an Encouragement for Knaves, it were to be wiſht, that ſome other good order for preventing loſs to Honeſt and Well-meaning Perſons were invented, and enacted as an unrepealable Law.

XI. The Poſſeſſor of an endorſed Bill for the account of the Drawer himſelf, is obliged to proteſt within the Reſpit dayes, or he looſeth his Remedy of the Endorſers.

XII. In the Proteſt for Non-payment, the day and date when the Proteſt was made muſt be legally expreſt, and it ought alſo to expreſs, how many dayes after it became due it was before the Proteſt was entred, and alſo what the cuſtom of the place is concerning Reſpit dayes, that it may appear on the one hand, how civil the Poſſeſſor hath been to the Acceptant, and on the other, how that he hath not by his negligence loſt his Right.

XIII.

XIII. When a Bill is proteſted againſt the Perſon of the Acceptant, the Notary Publick ought to know him well, and make himſelf acquainted with him; and if it be made againſt his Houſe, he ought to inform himſelf well, whether ſuch a Perſon live there or not, and if he can neither find his Perſon nor his Houſe, nor enquire where he may be found, then he muſt proteſt with what diligence and care he enquired after him, and then proteſt for the Rechange, Charges and Damage to be re-paid him by the Endorſers or Drawers, or either of them, as the Poſſeſſor thinks beſt.

XIV. If the Notary meet with his Perſon, or any of his Houſe, he muſt clearly expreſs what Anſwer they make to him, and what the Reaſons are that he can procure no ſatisfaction.

XV. When payment is demanded of one of the ſame Name with him to whom the Bill is directed, and he denyes that ever he accepted any ſuch *Bill*, then the Poſſeſſor is obliged to enquire if any other of the ſame Name dwell in the place where the payment ſhould be made, and if he can find none, then he muſt proteſt againſt him, and if he find two or more, and they all deny that they accepted

cepted any ſuch Bill, they muſt both or all be proteſted againſt.

XVI. Its no diſpect or diſcredit to any to ſuffer a *Bill* to be proteſted for Non-acceptance becauſe it ſtands in his own free will to accept or not; but to ſuffer an accepted Bill to be proteſted for Non-payment, and returned, (it may be cloaked as it will) is a great diſcredit to the Acceptant.

XVII. If the Acceptant pay a part of the Bill, and promiſe the reſt in a few dayes, within the Reſpit dayes, if he do not within that time ſatisfie the whole, the Poſſeſſor may proteſt for the whole, and is not obliged to return what he hath received back again to the Acceptant; but he muſt obſerve the Laws of Exchange, that is, demand of the Drawer, &c. the Rechange and Charges, &c. for the Remainder that was unſatisfied.

XVIII. If an Acceptant is unable or unwilling to pay his accepted Bill, and the Poſſeſſor is forced to proteſt againſt him, and he returns anſwer, that he is willing and ready to pay part, and that the Poſſeſſor may for the reſt proteſt and return the Bill if he pleaſe; then the Poſſeſſor does very fooliſhly if he refuſe to receive what is offered

ed to him, be it more or leſs, but yet he muſt proteſt for the whole.

XIX. If an Acceptant of a Bill of Exchange, after he hath accepted, ſhould prove inſolvent, or be publickly reported to be failed, ſo that he abſent himſelf from the Exchange, or if there be juſt ground of fear and jealouſies that he may be inſolvent before it may fall due, the Poſſeſſor of the Bill may demand better ſecurity by a Notary Publick, and if that be not given, he may proteſt and ſend the Proteſt away by the next Poſt; and when the Bill is due, if not paid, you muſt proteſt again for Non-Payment, ſo doth *Marius* adviſe.

XX. The ſame *Marius* adviſeth, that all Proteſts be made in the day time between Sun and Sun, and if it can be while the Shops are open, or not before they are open, *i. e.* between ſix and ſix a Clock in Summer, and between Sun and Sun in Winter.

XXI. If a Bill proteſted for Non-Payment be returned on the Drawer, and the Drawer diſcharge the ſame, then both he himſelf and the Acceptant are diſcharged from the Remitter and Poſſeſſor, or any other, but yet the Acceptant (if he accepted) is not diſcharged from the Drawer, but the Drawer

Drawer hath the ſame Right and Law againſt the Acceptant that the Poſſeſſor or Remitter would have had, if the Drawer had not diſcharged it.

XXII. Acceptants by acceptance ſimply do ſo far oblige themſelves, and make themſelves Debtors thereby, that if the Drawer fail, they have no Remedy or Redreſs againſt any of the Endorſers; and the caſe is the ſame, if the Acceptant or any other accept *ſupra Proteſt* in honour of an Endorſer, or any other Perſon, if that Endorſer fail and be inſolvent before or afterwards.

XXIII. If the Acceptant of a Bill fail, the Poſſeſſor is not obliged to wait till the laſt Reſpit day before he proteſt, but may proteſt ſooner when he pleaſes, after he knows of his failure, and muſt preſently give advice thereof to the Remitter, or elſe the Drawer is not obliged to pay Intereſt and Charges.

XXIV. Bills of Exchange proteſted, or to be proteſted, are liable to no Arreſts or Attachments, but if arreſted, the Notary Publick may make a Proteſt, or if proteſt, deliver the Proteſt, or the Copy thereof, and the Bills to the Poſſeſſor, if he demand them, and the Poſſeſſor notwithſtanding any

Arreſt

arreſt may do therewith what he pleaſeth, unleſs the Acceptant will make appear, that he either hath or will pay the Value according to the Tenure of the Bill.

XXV. There is nor can be any danger by proteſting Bills two or three dayes before the Reſpit dayes are expired; but becauſe the Reſpit dayes are not certain in many places, its therefore ſureſt to proteſt by times, than to hazard the loſs of the Law by too long a delay.

CHAP. XVIII.

Of the Payment of Bills ſupra. *Proteſt for Non-Payment.*

Rule I.

WHen a Bill for Non-Payment is proteſted, then any man may freely, even he that ſuffered the Bill to be proteſted, or he that did proteſt, pay and ſatisfie the ſame *ſupra* Proteſt in honour of the Drawer or Endorſer.

II. An Acceptant that hath freely and willingly accepted a Bill cannot afterwards

ſatisfie the ſame *ſupra* Proteſt in honour of an Endorſer, becauſe he as Acceptant is already obliged to the Endorſer; but an Acceptant, that hath not yet accepted the Bills, may diſcharge thoſe Bills in honour of the Endorſer or the Drawer, as if he were a third Perſon unconcerned.

III. When an Acceptant is drawn upon for the Drawer's account, and the Drawer hath not made Proviſion for the diſcharge thereof, and is fearful that he ſhall have ſome trouble in re-imburſing himſelf, in this caſe he need not freely and willingly pay the Bills that he freely and willingly accepted, but may proteſt the Bills for Non-Payment, and then he himſelf, or any other for him, may pay them *ſupra Proteſt*, cauſing the Right and Title to be transferred to him to proſecute the Drawer, by which means he may more eaſily convince the Drawer, and prevail with him to make Reſtitution of the Value he received, than perſwade him to re-imburſe what he hath paid for him.

IV. No man muſt pay a *Bill ſupra Proteſt* for Non-Payment, before he hath declared before a Notary Publick (either the ſame that made the Proteſt, or any other) in whoſe honour he diſcharges the Bill, whereof the Notary, after the Proteſt, or in

in another particular Inſtrument or Act, muſt give an account to the Parties concerned.

V. He that pays a Bill *ſupra Proteſt*, doth immediately ſucceed the Poſſeſſor in the Right and Title thereof, although there be no formal tranſport thereof, nor no *Ceſſio Actionis* from the Poſſeſſor to the Payer; yet to prevent all diſputes, its more adviſable for the Payer *ſupra Proteſt*, that he cauſe the Poſſeſſor of the Bill to make a Tranſport of his Action and Right to him formally.

VI. The Poſſeſſor of a Bill proteſted for Non-Payment, is not obliged to accept of the Payment of a third Perſon *ſupra Proteſt*, either in honour of the Drawer, or any Endorſer, unleſs he demonſtrate and declare, that the honour of that *Bill* was eſpecially recommended to him, and then he is fully obliged to accept of the Payment abſolutely, as if the true Acceptant had paid it.

VII. The Poſſeſſor of a Bill that accepts of Payment *ſupra Proteſt*, is obliged to tranſport his Right to the Payer, as well againſt the Acceptant, as againſt the Drawer, or any Endorſer, in whoſe honour he pays the Bill, yea, and againſt all others againſt whom the *Poſſeſſor* of the Bill, by virtue of that Bill hath any Right.

VIII. But if the *Bill* proteſted be endorſed by the *Poſſeſſor's* Correſpondent, by whom the *Bill* was ſent to him, then the *Poſſeſſor*, if circumſpect, will accept of no payment in honour of the Endorſements, but under expreſs condition, That the Payer ſhall have no Redreſs or Remedy againſt the ſaid Correſpondent.

IX. The *Poſſeſſor* of a *Bill*, proteſted for Non-payment, is not obliged to part with the *Bill* out of his hands to the Payer *ſupra Proteſt*, before he be actually ſatisfied and paid.

X. He that honours a *Bill*, proteſted for Non-payment, in honour of the Drawer, hath no Remedy againſt the Endorſers.

XI. He that honours a *Bill*, proteſted for Non-payment, in honour of an Endorſer, hath his Redreſs and Remedy not only againſt the ſaid Endorſer, but againſt all that were before him, and the Drawer alſo, but he hath no Action, Law nor Right againſt the Endorſers, that follow the Endorſer for whom he was willing to pay the *Bill*.

XII. When divers or ſeveral Perſons preſent themſelves to honour a proteſted *Bill* for

for Non-payment, then he is chiefly to be accepted that offers to pay in honour of the Drawer, and next to him, he that offers to pay for the earlieſt Endorſer.

XIII. When a *Bill* is paid *ſupra Proteſt* in honour of the Endorſer, and the Acceptant counſels or adviſeth him, that there is another (or he voluntarily offers himſelf) that will diſcharge the *Bill* in honour of an earlier Endorſer, or of the Drawer, and this before the Payer hath re-imburſed himſelf by re-drawing, then the firſt Payer is obliged to accept of the Payment of the ſecond, and to tranſport his Right to him, but the ſecond Payer will be obliged to pay not only all the former Charges, but half Proviſion alſo.

XIV. Men ought to be circumſpect in accepting *Bills* or paying *Bills* in honour of the Drawer, and yet more circumſpect when its done in honour of an Endorſer, and ſhould in no wiſe accept any *Bills* or pay any *Bills ſupra Proteſt*, but in honour of thoſe with whom they are well acquainted, and have had good Correſpondence, & whoſe Sufficieney and Generoſity is ſufficiently known.

XV. If the Acceptant be ſufficient to pay the *Bills*, and yet ſuffers them to be proteſted

for Non-payment, then he that will pay in honour of the Drawer, muſt or ſhould diligently enquire of the Acceptant, what Fundamental Reaſons he hath to ſuffer the *Bills* he accepted to be proteſted; for the Reaſons may be ſuch as might diſſwade others from paying them *ſupra Proteſt.*

XVI. If the Proteſt for Non-payment be ſent away, then its not in any wiſe adviſable for any man to offer to pay the *Bill ſupra Proteſt*, though the *Bill* be not ſent away, unleſs the *Poſſeſſor* of the *Bill* will give ſufficient ſecurity for the Reſtitution, in caſe the Drawer or Endorſer have re-paid the Value and Charges, &c. upon the preſenting of the Proteſt, or otherwiſe agreed with the Remitters.

XVII. Circumſpection is alſo required in the Payment of Bills *ſupra Proteſt*, that are made payable to order, and after ſome dayes ſight, when there hath been any negligence in demanding Acceptance; and above all, men ſhould be fearful to meddle with the Payment of any Bills *ſupra Proteſt*, that were not proteſted in time, within the dayes of Reſpit.

NB, As much Circumſpection is here neceſſary in the honouring of Bills for *Non-Payment* as was for the honouring of Bills for

None

Non-Acceptance, whereof we have treated, Chap. 14.

XVIII. When an Accepted Bill is proteſted for Non-payment, and the Acceptant is ſufficient, then there can be little difficulty in paying and diſcharging the ſame *ſupra Proteſt*, becauſe if neither the Drawer nor Endorſers will nor can re-pay the Value and the Charges, &c. yet the Acceptant remains obliged.

XIX. A Circumſpect Acceptant reſolving, for Reaſons known to himſelf, to ſuffer the Bills to be proteſted for Non-payment, and to return them on the Drawer, will ſeek for ſome known and truſty Friend that ſhall pay the Bill *ſupra Proteſt* in honour of the Drawer, and receive the Tranſport of the Action and Right from the *Poſſeſſor*, and by him ſeek his Redreſs on the Drawer.

XX. If a Bill *ſupra Proteſt*, in honour of the Drawer or Endorſer be paid, then the Payer uſually (if he hath no effects in his hands) redraws the ſame directly on him, for whoſe account he paid, and he augments the Sum mentioned in the Bill, with the Charges, Courtagie, Poſtidge and Proviſions.

XXI. When he that payes *ſupra* Proteſt, hath Revalued or Redrawn, he is obliged with the advice of the draught, to ſend the proteſted, and by him paid Bills of Exchange, and the Proteſt, and the Inſtrument of his offering to diſcharge the ſame, and the Acquittance for the diſcharge thereof, to his Friend, to be ſhown to the Perſon in whoſe honour he paid, and to demand the Acceptance and Payment of his Bills on that account.

XXII. If a Bill be paid *ſupra* Proteſt in honour of the Drawer, with the Obligation of any or all the Endorſers, then the Payer is obliged to ſend the Proteſt, &c. to all and as many of them as he will keep obliged to him, and to adviſe them, that to ſpare them trouble, and to prevent the reſpective Loſſes of the Rechange, he hath redrawn upon the Poſſeſſor, they remaining ſtill obliged —But ſuch an honourer of a Bill doth diſtruſt the Drawer, and therefore will get ſmall Thanks for his Pains.

XXIII. The Drawer or Endorſers of a Bill proteſted for Non-payment, and *ſupra* Proteſt honoured by a known Friend, or not, being Redrawn upon, for the Re-imburſement, is obliged to accept and honour the

the Bill with punctual Payment, or elſe he is Guilty of the greateſt Incivility and Ingratitude imaginable, and if he ſhould refuſe, he may be compelled to it, and to Reimburſe all the Charges and Damage, the Drawer having got a tranſport of the Right of the firſt Poſſeſſor to himſelf.

XXIV. If a *Drawer* make any difficulty, alledging that his Bill was accepted, and that therefore the *Remitter* muſt ſeek his Redreſs on the Acceptant, &c. yet the *Remitter* is obliged firſt to try what the *Drawer* can do, and then to look to the Acceptant.

XXV. If a *Drawer* ſuſpect that his Bill, though accepted, will for Non-payment be proteſted, he muſt look about to procure ſome that will, in honour of himſelf, accept and pay the Bill, and to receive from the Poſſeſſor a ceſſion of his Action and Right againſt the *Drawer* and *Acceptant*, and ſo by him endeavour to procure right of the *Acceptant*; for upon refuſal, Execution lies always ready.

XXVI. He that hath accepted a Bill *ſupra* Proteſt in honour of the *Endorſer* or *Drawer*, and pays the ſame at the day appointed, he is accounted alſo to have paid the

the ſame *ſupra* Proteſt; and its unneceſſary to make a new Proteſt for Non-payment, though now Uſe and Cuſtom hath brought it almoſt into Faſhion in ſome places, that Bills proteſted for Non-acceptance, muſt alſo be proteſted for Non-payment.

CHAP. XIX.

What the Poſſeſſor of a Bill Proteſted for Non-payment, and not diſcharged ſupra *Proteſt, hath further to do.*

Rule I.

IN caſe the Acceptant do not diſcharge his accepted Bills at the day appointed, then the Bills with the Proteſt muſt be returned.

NB, ſome hold, that its not neceſſary to ſend the Bill back again, if the Drawer live at a great diſtance, or have no certain place of abode; Others the contrary. But if the *Drawer* and *Poſſeſſor* underſtand one another well, and the *Drawer* would force the Acceptant to the payment, then let him give Security to the *Poſſeſſor* conditionally, if he cannot procure payment of the Acceptant,

to

to ſtand obliged for the Sum, and then let him neglect to proteſt on the laſt Reſpit day, whereby having loſt his Redreſs on the *Drawers* and *Endorſers*, he hath only the Acceptant to look upon, and by virtue of the Proteſt can force him to the Payment, if he be able.

II. The *Poſſeſſor* of an endorſed accepted Bill, proteſted for Non-payment, and not diſcharged *ſupra* Proteſt, hath his Redreſs on the Drawer and all the Endorſers.

III. Its uſual, that the *Poſſeſſor* of ſuch a Bill, proteſted for Non-payment, and not *ſupra* Proteſt diſcharged, doth redraw the value on him, from whom he received the Bill, whether he be the firſt Remitter, or any other Endorſer; but if the ſame that ſent him the Bill be not to be found, or be fail'd, or if it be more convenient for the *Poſſeſſor*, or to pleaſure a later Endorſer, he may well draw the value upon ſome other earlier Endorſer, and demand of him, or of the Drawer, reſtitution of the Value and the Charges; and in caſe of refuſal compel him to it.

IV. But however, the Perſon from whom he received, or with whom he negotiated the Bill, is obliged to make Reſtitution,

tution, and he again hath his Redreſs on the Acceptant, Drawer, or any other earlier Endorſer.

V. The *Poſſeſſor* of ſuch a Bill, muſt not directly demand Reſtitution from the Drawer, without firſt giving notice of the Non-payment and Proteſt to the Endorſers, leſt he loſe his Redreſs on them.

VI. Its the duty of the *Poſſeſſor* of ſuch a Bill, not only in caſe of Proteſts for Non-acceptance, but alſo for Non-payment directly without delay, to adviſe the Remitter thereof, and to ſend Copies of the Proteſt to him, that he may ſecure the Reſtitution from the Drawer.

VII. The *Poſſeſſor* of ſuch a *Bill* is obliged inſtantly, without delay, to demand reſtitution of the Drawer, or Endorſer, or Remitter; nor muſt he for his own pleaſure, or at the Acceptants requeſt, neglect to ſend the *Proteſt* by the firſt Poſt after, and the *Bill* by the ſecond Poſt at furtheſt.

VIII. In caſe the laſt Reſpit day be on a Poſt day, and Payment is demanded, to which the Acceptant anſwers, that it either is already done in Bank, or will that day be done, then the *Poſſeſſor* may delay to proteſt,

teſt, or having proteſted, to ſend it away by that Poſt; and on the contrary, if he ſuſpect the Acceptant or the Drawer, he may proteſt, and ſend the *Proteſt* away that ſame Poſt-day.

IX. The *Poſſeſſor* does not well, if he in ſuch a caſe, having proteſted before, or on the laſt Reſpit day, re-draw the ſame on that day, or ſend the *Bill* with the *Proteſt* away.

X. But if the Acceptant, after the laſt Reſpit day, or any other third Perſon offer to pay the *Bill*, in caſe the *Poſſeſſor* hath ſent the *Bill* and *Proteſt* away, he is not obliged to accept of their offers, eſpecially if he hath redrawn the Value; though he may have the *Bill* and *Proteſt* yet by him.

XI. No *Bills* of Exchange *proteſted*, or to be *proteſted*, can be arreſted in the Notaries hands, and the Notaries may, notwithſtanding ſuch an Arreſt, (yea, and muſt if demanded) deliver the *Bill* with the *Proteſt* to the *Poſſeſſor* to proceed therein, according to his pleaſure, except only that the Acceptant can ſufficiently demonſtrate that he hath paid the Sum fully, in which caſe the Notaries are bound to obey the Arreſt.

XII.

XII. Nor need the Acceptant arreſt his *Bill* and *Proteſt*, &c. it being enough for him to proteſt again againſt the *Poſſeſſor*, and to declare that he hath offered full ſatisfaction to the *Bill*, which *Proteſt* he muſt ſend to the Drawer.

CHAP. XX.

To what the Drawer and Endorſers of Bills returned with Proteſt for Non-Payment, are further obliged to.

Rule I.

THe Acceptant cannot be compelled to the Payment of a Bill unleſs by him accepted; nor the Drawer or Endorſer to the Reſtitution, unleſs the Bill be returned with the Proteſt for Non-payment.

II. The Drawer or Endorſer is obliged at the preſenting of the Proteſt (if it be in all the Circumſtances rightly made, and in the right time, according to the Laws and Cuſtoms of the place where the Payment was

to

to be made) to give preſent and punctual ſatisfaction, which conſiſts in the Re-payment of the Value, the Re-change and Charges, as Courtagie, Proviſion, and for the Proteſt and Poſtidge.

III. When the Value of the Bill is re-drawn, augmented with all the Charges, then the Drawer and Endorſer are obliged to pay the re-valued Sum, though the ſame were not taken at the loweſt Courſe; and ſo in like manner when the Re-valuer or Re-drawer hath negotiated a Bill with any other, which is payable to a third Perſon, but if he diſcount the Sum, and make it payable to the Remitter, then the Drawer or Endorſer need pay no more than according to the Courſe that day; and if that day the Proteſt was made, and the Poſt after there was no Courſe made upon ſight, but at time or uſance, then the Courſe upon time muſt be reduced to the Courſe upon ſight by ſubſtracting a reaſonable Intereſt from the Courſe upon time, unleſs the Drawer and Remitter could agree that the time ſhould run out before the Payment ſhould be demanded.

IV. The Drawer and Endorſer are obliged in the Reſtitution of the Value, according to the Courſe of Exchange, though the full Sum of the Bill be not re-drawn.

V.

V. They are alſo obliged to re-pay Proviſion, Poſtidge, and the Charges of the Proteſt, though the full Sum be not re-drawn.

VI. The Proviſion that the Drawer muſt pay for a proteſted Bill of his, is due half to the Proteſter, and half to the Remitter, &c.

VII. The Drawer or Endorſer are obliged to pay no more than according to the Courſe of Exchange, though the Re-draught be at a lower Courſe than when it was firſt drawn or endorſed.

VIII. The Drawer of a Bill payable to order is no further obliged (though the proteſted Bill were endorſed in ſeveral places, and returned the ſame wayes) than in the Payment of the Re-draught from the place where the Bill was to be paid, directly to the place where it was drawn, and at ſuch a Courſe as it was at the time of proteſting; and ſo the Endorſers are no further obliged than in the Courſe of Rechange from the place where it was to be paid, to the place directly where it was endorſed by them.

IX. When a Bill is in one place, ſucceſſively endorſed by ſeveral Perſons, and is returned with Proteſt to the laſt Endorſer, he is obliged

obliged to make ſatisfaction inſtantly, either himſelf or by ſome other Endorſer before him, or for him; and if he pay, and ſatisfie it himſelf, he is not then to demand Proviſion or Chargesof the other Endorſers or Drawer in the ſame place, more than he himſelf hath actually paid.

X. TheRemitter or Poſſeſſor of a Bill proteſted for non-payment is not oblig'd neceſſarily to compel theDrawer or Endorſer of a Bill to the Reſtitution, if he had rather ſeek his Redreſs on theAcceptant; and ſo on the contrary, he is not neceſſarily obliged to look on the Acceptant, when he had rather ſeek his Redreſs on the Drawer or Endorſer, nor is he obliged to give them any time for the Payment, but may, when the Payment is not punctual, proceed againſt which of them he pleaſes, by Arreſting either their Perſons, or Goods, or both.

XI. No Drawer or Endorſer is obliged to make Reſtitution at the ſight of the Proteſt alone, nor at the ſight of the Proteſt and the unaccepted Bill, when one of them hath been accepted, but he is obliged to give ſufficient caution and ſecurity to the Remitter at the ſight of the Proteſt alone, and to make Payment when both the accepted Bill and the Proteſt are preſented.

XII. No Drawer or Endorſer is obliged at the preſenting of the Proteſt for Non-payment, made before the laſt Reſpit day, when the Acceptant hath not abſolutely denyed payment, but only deſir'd delay till the laſt reſpit day, to give any caution or ſecurity, much leſs to re-pay the Re-change and Charges, &c. if he can prove that the Acceptant (or a third Perſon *ſupra Proteſt*) would on the laſt reſpit day pay the ſame, and that the Bill had effectually been paid if it had remained at the place of Payment ſo long.

XIII. No Drawer or Endorſer is obliged to pay the Re-change of an accepted Bill, if the Proteſt were not made within the limitted dayes of Reſpit.

XIV. If the Payment of a Bill be demanded on the day it becomes due, and the Acceptant is commanded by Authority of the Magiſtrate not to pay it, yet the *Poſſeſſor* may proteſt for Non-payment, and the Drawer is obliged to pay the Rechange; but if for any Accidental Occurences the Payment cannot be demanded, (as perhaps a City may be beſieged, and the *Poſſeſſor* is not allowed to go in to make his Demands, *&c.*) then the Drawer is not obliged to make Reſtitution, but the whole Sum runs upon the

Riſco

Riſco and hazard of the *Poſſeſſor* or *Remitter* of the Bill.

XV. If the Endorſer unadviſedly or ignorantly makes Reſtitution for a Bill proteſted for Non-payment after the Reſpit dayes, and the Drawer refuſeth to make him ſatisfaction, then the Endorſer hath no Redreſs, but to demand Reſtitution again from the Perſon to whom he paid the Value.

XVI. The Drawer, or he that makes Reſtitution for a Bill proteſted for Non-payment within the dayes of Reſpit, muſt remember to demand *Ceſſionem Actionis* from the *Poſſeſſor* againſt the *Acceptant*, whom he may compel to give ſatisfaction.

XVII. It many times happens, that the *Poſſeſſor* of an accepted Bill, proteſted for Non-payment, is by the *Drawer*, after Reſtitution made, deſired under pretence and proteſt of the *Drawer's* refuſal to make Reſtitution, to compel the *Acceptant* to give ſatisfaction; but it is very unhandſome for a third Perſon unconcern'd to receive *Ceſſionem Actionis*, and ſeek his Redreſs on the *Acceptant*.

XVIII. When the Drawer hath paid the Bill that was returned with Proteſt for

Non-payment, the Drawer is thereby freely discharged against all Parties to whom the said Bill was made payable, either immediately in the Bill, or mediately by Assignments, were they never so many; nor can any one any way molest or trouble the Drawer, nor can any one of them prosecute the Accepter on that account any further; but yet the Accepter is not totally discharged if the *Bill* were for the Drawers or any others account, to whom the Acceptant should be responsible.

CHAP. XXI.

What an Acceptant of a Bill that he hath suffered to be protested for Non-payment, and is returned with Protest, is obliged to.

Rule I.

IF the Acceptant, at the day of payment, refuse to discharge Bills he accepted, if the Bills be returned to the Drawers with Protest, to demand satisfaction, and the Drawers refuse to do it, returning the Bill again, then the Possessors of the Bills have as much Right and Law against the Acceptant,

tant, as againſt the Drawer himſelf, *viz.* their Perſons and Goods may be Arreſted and Attached.

II. Though the Poſſeſſor of a Bill hath no redreſs upon the Drawer, if he after the days of reſpit cauſe the Proteſt (for Non-payment of an accepted Bill) to be entred, yet this notwithſtanding, if the Drawer be yet in credit, the Acceptant cannot be compelled by Arreſts or Attaches, to make ſatisfaction, till the Bill, ſent with Proteſt to the Drawer, is again returned on the Acceptant.

III. A Bill made payable for the account of the Drawer himſelf, not paid at the due time, but proteſted for Non-payment, need not be returned on the Drawer, but he may inſtantly without delay, compel the Drawer to make ſatisfaction by Arreſts and Attaches where-ever he finds him.

IV. An Acceptant of an endorſed Bill, proteſted for Non-payment, cannot be proceeded againſt by Arreſts and Attaches, if any one, or all the Endorſers refuſe to make ſatisfaction, unleſs the Drawer himſelf alſo refuſe to do it, and this be proved by good Evidence.

V. The Acceptant of a Bill, returned with Proteſt for Non-payment, and again returned on the Acceptant, is only obliged to pay the Exchange and Rechange, Proviſions and Poſtige, and no other Charges more.

VI. The Exchange is reckoned, according to the courſe at ſight at that time, and in that place where the Proteſt is made, to the place where the Payment muſt be made by the Drawer, and if it be not paid there, then the ſum is again increaſed, the Proviſion and Poſtige being again added, and then the courſe is reckoned again upon the whole ſum, according as it ſhall be at that time and place upon ſight, to the place where the Bill is to be paid, and the Acceptant is obliged to pay the Rechange, and all the Charges, although the Parcel was not effectually negotiated and redrawn, *i. e.* Rechange, Proviſion and Poſtidge muſt be twice paid, &c. As,

VII. Proviſion twice for the Exchange and Rechange.

VIII. The Charges are no other than Poſtidge, and for the Proteſts, unleſs the *Acceptant* forced (by his delays and excuſes) the *Poſſeſſor* of the *Bill* upon ſome unneceſſary Charges,

Charges, which the *Acceptant* is obliged to pay, but no extraordinary Charges, as for Travelling, Bribing and Spending, &c.

IX. He is obliged to pay Intereſt, if he do not preſently without delay ſatisfie the returned Bill, which is to be reckoned from the day that the Bill was due upon, to the time of its diſcharge, and the *Poſſeſſor* may charge his Account with Intereſt after the rate of 8 *per Cent. per Annum*, which any Creditor may charge his tedious Debtor with, when he payes not punctually at the time.

X. Though the Notary Publick does declare, and in the Proteſt expreſs, That he proteſts for all Damages, &c. that ſhall accrue, yet no *Acceptant* is obliged to make any other Loſs or Damage good, but what are above ſpecified, as the Rechange, Proviſions, Proteſts and Poſtidge, in manner and form as before declared; nor can the *Poſſeſſor* with any Equity or Law compel the *Acceptant* to make good any loſs or damage that he pretends to have ſuſtained for want of punctual payment, as the fruſtrating of his Deſigns, the loſs of ſome convenient and profitable Opportunity, or any ſuch like thing.

XI. No prudent man will *ſupra* proteſt

accept and ſatisfie any Bill that is returned unſatisfied from the Drawer, unleſs he hath expreſs order to do it in his honour.

XII. Though the *Poſſeſſor* of a Bill proteſted and returned from the *Drawer* unſatisfied, hath thereby Right and Law againſt the *Acceptant*, and may proceed againſt him, by Execution, Arreſt and Attach, *&c.* yet he is not neceſſarily obliged thereto, but if he will he may, at the *Acceptant's* requeſt, ſpare him, and ſeek his regreſs again upon the firſt *Drawer*, unleſs he hath expreſs order to the contrary.

CHAP. XXII.

Of Subſcribing a Second or Third Bill.

Rule I.

WHen the Drawer is not acquainted with the Remitter, or that the Remitter queſtions his ſufficiency, its then uſual for the Drawer to make his Bill payable to ſome Friend of his, who will endorſe the Bill, with whoſe ſufficiency the Remitter is ſatisfied.

II.

II. But in caſe the Friend will not willingly endorſe, or the Drawer for ſome Reaſons will not deſire it of his Friend, then its uſual and cuſtomary for that Friend to ſubſcribe the *ſecunda* or *tertia* Bill.

III. He that doth ſubſcribe a *ſecunda* or *tertia* Bill, doth only ſubſcribe his Name under the Drawer's, without adding a Syllable more, and thereby he doth as fully and amply oblige himſelf as the principal Drawer doth.

IV. No Mackeler or Broger muſt promiſe the Remitter, that any other Friends ſhall ſubſcribe the Drawer's *ſecunda* or *tertia* Bill, unleſs he know for certain that it will be ſo.

V. If in the Contract the Drawer ſimply negotiate in his own Name, and does not promiſe that any other ſhould under-write for him, or the Remitter does not expreſly condition for it, then the Drawer is not obliged at the requeſt of the Remitter to procure any to ſubſcribe his Bills.

VI. By Subſcription of a *ſecunda* or *tertia* Bill, the Subſcriber doth only oblige himſelf to the Remitter, and to him to whom he gives the *ſecunda* or *tertia* Bill, by him ſubſcribed;

ſcribed; thus if the Remitter or any other keep the *tertia* ſubſcribed Bill, and the Poſſeſſor of the *prima* and *ſecunda* unſubſcribed would ſeek any redreſs upon him, he cannot for want of the *tertia* ſubſcribed Bill.

VII. Becauſe the ſubſcribing of a *ſecunda* or *tertia* Bill is only for ſecurity of the Remitter, and is to the diſpect and diſcredit of the Drawer, therefore not to leſſen the Credit of the principal Drawer, the ſame is uſually concealed, not divulged, nor ought the ſubſcribed Bill to be ſent away to any other place.

VIII. Becauſe the Bills drawn on *Venice* muſt be done directly, and made payable by ſome there, therefore ſome that give and take, remit and draw on one Exchange time, in one day, make uſe of this Method, they order their Drawer to make his Bills according to their Direction, the Value from him received, and for their ſecurity they ſubſcribe the *ſecunda* or *tertia* Bill; but a prudent and underſtanding Drawer will judge himſelf unobliged to make any Bills, but ſuch as make the Value to be received of the Remitter, to prevent the ſubſcribing of the *ſecunda* or *tertia Bill.*

IX. The Bills ſubſcribed by another being ſatisfied,

ſatisfied, ſhould be again delivered to the principal Drawer, who in the *prima* Bill acknowledgeth to have received the Value of him, and the Remitter is very imprudent if he pay the Value to the Subſcriber, though he contracted with him, and looks more upon the Subſcriber than the principal Drawer.

X. He that ſubſcribes a *ſecunda* or *tertia* Bill, does wiſely if he on the day of Payment enquire of the Poſſeſſor or Remitter, whether the Bill be ſatisfied or no, that he for his ſecurity may have the ſubſcribed Bill cancelled or re-delivered.

CHAP. XXIII.

Of Exchanging for Account, and in the Name of a Third Perſon.

Rule I.

EXchange is made in the Name and for Account of a third Perſon when any one doth by the Order, full Power and Authority of another, which is called among Merchants *Procuration*; and thus Bills may be drawn, ſubſcribed, endorſed and accepted, not in the Name or for the Account of him

him that doth draw, ſubſcribe, endorſe and accept, but in the Name and for the Account of him that authorized him.

II. Great prudence is to be uſed in giving any man full Power and Authority by Procuration to draw or accept Bills of Exchange; for he that is credited ſo much, is credited with the Credit and Eſtate of him that appointed him, his Well-fare is in his Procurators hands.

III. A prudent Merchant will be prudent and circumſpect in granting any ſuch full Power to any one, and will adviſe all his Correſpondents (on whom his Procurator ſhall have occaſion to draw, &c.) with and under his own Hand, that he hath granted to ſuch and ſuch a one ſuch a full Power to draw in his Name *Bills of Exchange*, and deſire them to give credit to his Subſcription, till he revoke and evacuate his ſaid full Power, or till ſuch a time as he ſhall limit.

IV. He that by Procuration in the Name of another, *Bonâ fide*, does negotiate, draw, endorſe, ſubſcribe and accept Bills of Exchange, by under-writing his own Name, and his Quality, does thereby as effectually oblige his Principal (himſelf being in the mean time not in the leaſt obliged) as if he himſelf had ſubſcribed.

V.

V. He that negotiates, draws, accepts, endorſeth, &c. Bills of Exchange in the Quality of a full Power and Procurator, in the Name of another, is obliged at all times to prove his Quality, and if he cannot do that, nor hath that full Power he pretends to, is not only himſelf obliged to perform all that he hath negotiated with others in the Name of a third Perſon, but (if I may add my private Opinion) is liable to be ſeverely puniſhed as a Knave and a Cheat, for pretending to that which he had not.

VI. If any draw or accept by Procuration, and have not that full Power they pretend to, they do not thereby oblige the Perſon whoſe Name they make uſe of, nnleſs it can be proved, that ſuch a Perſon hath given them ſuch a full Power.

VII. A prudent Remitter will receive no Bills, nor a prudent Poſſeſſor accept of no Acceptance that is ſubſcribed by the Wife of the Drawer or Accepter, or by their Servants or any other, as having full Power, unleſs he or they produce the full Power, and Inſtrument, and Procuration, or be every way as able and ſufficient as the Drawer or Acceptant himſelf.

VIII.

VIII. A prudent *Remitter* or *Poſſeſſor* of a Bill will look narrowly to this, that the *Procurator* be ſufficiently impowered, and that the full Power be not antiquated out of date, or recalled; and in this caſe it were very neceſſary and advantagious to all Dealers by Exchange, that every Procurator ſhould cauſe his Inſtrument of Procuration to be regiſtred in ſome publick and known place, that their ſufficiency and continuance may the better be known.

IX. He that doth negotiate Bills, &c. as a Procurator, ſhould before he conclude the Parcel, expreſly condition that the Bills ſhall be ſubſcribed by him, as having full Power and Authority from the principal Drawer; and if this be not expreſly agreed upon, the Remitter is not obliged to take ſuch Bills, nor to ſearch into the Validity of his full Power, or the like, but may refuſe to give him Moneys, or receive his Bills, if he ſo pleaſe.

X. The *Poſſeſſor* of a Bill muſt accept of the Acceptance of a Procurator, if the Inſtrument of Procuration expreſly declare, that all Bills by him accepted are for the account of the Principal, or eſpecially, that ſuch and ſuch Bills as the *Poſſeſſor* hath, are for his

his account; but if the Procuration be not clear nor expreſs in this, then he is not obliged to accept of any Acceptance from any that he doth not look upon as ſufficient.

XI. He that hath a full Power to draw ſimple Bills of Exchange in the Name and for the Account of a third Perſon, hath alſo Power to draw in and endorſe all Bills of Exchange that are made payable to the order of his Principal.

XII. *Marius* aſſerts, That a Merchant's Word or Letter to his Wife, Friend, Servant or other, to accept Bills of Exchange, is not ſufficient, without an Inſtrument and formal full Power, to that end there muſt be Hand and Seal, and Witneſſes to prove it, if need be.

XIII. But if there be no ſuch Inſtrument, if the Wife, Friend or Servant in his abſence have formerly uſually accepted his Bills, and he, when he hath returned Home, hath approved thereof, and this can be proved, it will come very cloſe to the Matter, and be near upon as good as a legal and formal Inſtrument.

CHAP.

CHAP. XXIV.

Of Bills of Exchange drawn on one Place, but Payable in another.

Rule I.

THe meaning of this Title is thus; When he that is drawn upon (or the Acceptant) dwells not in the ſame place where the Bill is to be paid, but yet the Acceptant is obliged to bring his Monyes to that place where the Bill is to be paid, thus; Bills are drawn on *Briſtol* in *London*, i. e. the Acceptor dwells in *Briſtol*, but the Payment muſt be made in *London*, againſt which time the Acceptant muſt have his Moneys ready at *London*. Thus alſo Exchanges are made on *Uliſſingen* in *Middlebrough*, on *Enchuyſen* and other Cities of the Province of *Holland*, in *Amſterdam*, on *Bruſſells* in *Antwerp*, *Lubecke* in *Hambrough*, *Lions*, *Roan*, &c. in *Paris*, *Valentia*, in *Madrid*, &c.

II. The Remitter is not obliged to take Bills drawn upon one that dwells not in the place where the Bill is to be paid, without an Addreſs, eſpecially when the Bills are made

made payable at ſo many dayes ſight, or at Uſance (if Uſance be reckoned after ſight) except this Condition be expreſly by him agreed to.

III. The addreſs of a Bill of Exchange, is a direction, made either by the Drawer or the Acceptant, ſimply declaring by whom, and where the Payment ſhall be ready, at the time appointed, and to whom the Poſſeſſor may addreſs himſelf in his abſence, as if he were preſent.

IV. He to whom the Bill is addreſſed by, the Drawer is not obliged to accept the Bill, nor he to whom the Acceptant makes the Addreſs to pay, nor to declare whether he will pay it or no, before the Bill become due, or any way to oblige himſelf for the Payment thereof: But

V. He that hath the Bill, may demand acceptance of the Perſon to whom it is addreſt, and in caſe he hath no Order, no Procuration, nor full Power from the Acceptant, to accept his Bills in his Name, and for his Account, the Poſſeſſor may deſire the Perſon, to whom it is addreſt (if a true and truſty Friend and Perſon) to ſend the Bill to the Acceptant to procure acceptance, or to return it with Proteſt, which the Perſon, on

whom its addreſt, is obliged to, or elſe the Poſſeſſor may, before the ſaid Perſon, make his Proteſt for Non-acceptance.

VI. If the *Poſſeſſor* dare not truſt the addreſſed with the Bill, that he may demand acceptance, or if the Drawer hath not addreſt the Bill at all, then its the duty of the *Poſſeſſor* to ſend the Bill, or cauſe it to be ſent, to ſome that lives at the place where the Acceptor dwells, to demand acceptance, or upon refuſal to Proteſt.

VII. Its alſo uſual, when the *Remitter* or *Poſſeſſor* have no Correſpondent to ſend the Bill to, that lives at the place where the Acceptor dwells, to deſire the Drawer to ſend the *Prima* Bill to the Acceptant, to procure acceptance, and to return it accepted to the *Remitter* or *Poſſeſſor*, to which the Drawer is not obliged, yet cannot well refuſe, if he be aſſured of the real Honeſty of his Correſpondent, and that he will accept his Bill.

VIII. In caſe the Drawer do not in a convenient time, return the Bill accepted to the Remitter, as above, the Drawer is not obliged in ſuch a caſe, to give any further ſatisfaction to the Remitter, but the Remitter muſt look to it himſelf, and ſend the ſecond a Bill to ſome other, to procure acceptance, and to enquire

enquire whether the *Prima* be accepted or no, and if not, then the Acceptant muſt accept the *Secunda*, or a Proteſt muſt be entred againſt him.

IX. But a prudent and circumſpect Remitter will not leave *Prima* Bill in the Drawers hands to procure acceptance, unleſs he be ſufficiently aſſured of his Honeſty and Ability.

X. When the Poſſeſſor of ſuch a Bill hath no Correſpondence at the place where the Acceptant lives, nor any who will take upon them the trouble to ſend it, nor dare the Remitter truſt the Drawer with it; or if the Bill be payable in a place where there is no Bank; or if the Bill muſt be paid in currant Moneys *per cuſſa*, and not in Bank, then its uſual for the Poſſeſſor to adviſe the Acceptant by Letter, that he hath ſuch and ſuch a Bill on him, and deſire him to return Anſwer, whether he accept the ſame to pay it at the time or no; but if he get no Anſwer at all, or for anſwer, that he will not accept it, nor pay it, then the Poſſeſſor is obliged, to carry or ſend the Bill to that place, and there formally by a Notary Publick demand acceptance, and in caſe of refuſal to proteſt.

XI. If the Acceptant be an Out-dweller,

(*i. e.* dwells in another place than where the Bill muſt be paid) then when acceptance is demanded, uſually the Poſſeſſor deſires him to under-write to whom he muſt at the time addreſs himſelf for Payment. But the Acceptant is not obliged to do this; but on the contrary, the Poſſeſſor is obliged to give the Acceptant timely notice to whom the Bill muſt be paid, if it be a Bill that is payable to order.

XII. When a Bill is made payable after ſight, or at uſance (and uſance be reckoned after ſight) by an Out-dweller, then the Acceptant may date his Acceptance on the day it was demanded of him, if Acceptance be demanded directly from the place where the *Bill* was drawn; but if the *Bill* be firſt ſent to the place where the payment muſt be made, then the Acceptance ought to be dated the day of the arrival of the Bill at that place, and not on the day of its being preſented to the Acceptant in the place where he lives, if the Poſſeſſor will ſtand ſtrictly and preciſely for a day with the Acceptant, otherwiſe its no loſs or prejudice to the Poſſeſſor when the Acceptance be dated, if within the juſt time.

XIII. An Out-dweller muſt take ſpecial care that the Bill be diſcharged at the day in its due place, and muſt not wait till the Poſſeſſor adviſe him thereof. XIV.

XIV. When a Bill is payable by an Out-dweller to order, and not to a certain Perſon, and the Acceptant hath not ordered to whom the laſt aſſigned ſhall addreſs himſelf at the day of payment, then the Poſſeſſor (whoever he be) is obliged to give the Acceptant timely notice to whom the Bill muſt be paid, that the Acceptant may within the Reſpit dayes return an anſwer, and make all due and neceſſary preparation to diſcharge the ſame.

XV. If the Out-dweller at the time appointed remit to the Poſſeſſor of his accepted Bill, in other Bills due at the ſame time with the Poſſeſſor's Bills, the *Poſſeſſor* is not obliged to demand Acceptance and Payment of thoſe Bills of his Acceptant, the Out-dweller, unleſs he hath Proviſion allowed him, becauſe he hath double Trouble in procuring his Moneys, and is obliged to keep a Correſpondence, and many other inconveniences may follow; but when the Acceptant doth ſimply addreſs the *Poſſeſſor* to ſome certain Perſon, to demand payment of him for the Bill, to him he is obliged to go to receive his payment, without any Proviſion.

XVI. When an Out-dweller hath a Bill remitted to him, payable by an In-dweller,

and the Out-dweller desires his Acceptant at the day to send him his Moneys in Specie, or to remit him the value in other Bills, the In-dweller is not obliged to do this without allowance of Provision, *&c.*

XVII. The *Possessor* of a Bill payable by an Out-dweller, must at the last day of Respit (if he get no payment) order a *Notarius Publicus* to enter a Protest for Non-payment, which Protest, though not made in presence of the Person, nor at the House of the Acceptant, is valid, and effectual to all intents and purposes, because the Possessor of the Bill is not obliged to protest against an Out-dweller at his House or Dwelling, nor to seek him out of the City or Town where the payment is to be made.

The Out-dwellers of *Amsterdam* have made use of this Policy, to make the foregoing *Rule* and *Protest* ineffectual on the day of Payment, pretending Ignorance of the Person to whom the payment is to be made; they at the place where the payment is to be made address themselves to a Notary Publick on the last respit day, and there declare to him, That such and such a Bill payable to order, by them accepted, is now become due, whereof none have demanded payment, they therefore protest for their readiness and willingness to discharge the said Bill, and accordingly

accordingly they cauſe a formal Proteſt to be drawn up, and ſend the ſame to the Drawer, to make uſe of the ſame againſt any other Protelt for Non-payment; but this ſlight and cunning might be prevented if one general *Office of Proteſts* were erected, where all Proteſts ſhould be Regiſtered, and ſo every one might ſee to whom they are to apply themſelves.

XVIII. *Marius* adds, That in caſe an Out-dweller refuſe Acceptance when the Bill is ſent to him, Proteſt may either be made at the Houſe of the Out-dweller, by the Perſon who was ordered to demand Acceptance, or elſe at the place of Payment, the Friends Letter that demanded Acceptance being produced to the Notary is ſufficient to ground the Proteſt upon, and ſo alſo in caſe of Non-payment.

XIX. Though the Poſſeſſor be not obliged to ſeek for payment of an Out-dweller in any place than where the Bill is payable, and the Drawer or Acceptant hath addreſt it, yet he may, in caſe of Non-payment *Executive proceede* againſt the Acceptant in any place where he either finds his Goods or his Perſon. *Sigiſm. Scaccia.*

XX. *Scaccia.* The Debtor by Exchange is

obliged to bring his payment to the place of payment, though it be both chargeable and dangerous, and the *Risco* and Expences are his own, and if the Debtor requeſt the Creditor to take his payment in any other place, and the Creditor conſent, the *Risco* and the Charges muſt be paid and allowed by the Debtor, as they can agree; but if the Creditor receive his payment ſimply, then he takes the Hazard and Charges upon himſelf.

XXI. So alſo the Creditor by Exchange is obliged to come to receive his Moneys at the place appointed, though it be both expenſive and hazardous to carry the Moneys Home, or to any other place where he would have it, but yet the Creditor can and may ſeek his Debtor in any place where he will, and there receive his payment, but then he cannot compel the Drawer to bear the Charges thereof, nor the *Risco*. *Scaccia.*

FH
MVSEVM
BRITANNICVM

CHAP.

CHAP. XXV.

Of Exchanges in Commiſſion, in General, and of Bills drawn on one Place over another Place.

Rule I.

EXchange to a place, over a place (or thorow a place) is, when Bills are not made payable, or remitted to the place or City directly where the Moneys are, or where the Remitter would have his Moneys, but on ſome other place, from whence the Value is to be re-drawn or re-remitted, to the place where the Money is to be paid, or where the Remitter would have his Moneys.

Exempli gratia:

A Drawer hath Moneys lying at London, *and would gladly have it at* Dantzick; *the Drawer at* Dantzick *cannot directly draw his Moneys in from* London, *but firſt he draws on* Hambrough *or* Amſterdam, *and then orders his Friend at* Hambrough *or* Amſterdam *to draw upon* London.

II. The Reaſon of this kind of Exchange is either, *Firſt*, Becauſe directly there is no Courſe

Courſe of Exchange, or no Reſcount; Or, *Secondly*, Becauſe it may be more advantagious and profitable thus to negotiate Exchanges, than directly.

III. *Bills* of this nature muſt be made firſt payable at the place, over or thorow which we draw, and to a Perſon dwelling in the place whereto the Remitter remits, whether he be Factor, Servant, or any elſe.

IV. A *Factor* is one that ſerves another in Commiſſion, that obſerves his Principal's order, and acts according to his direction, for which he receiveth Proviſion.

V. Proviſion is the Reward the Factor receives from his Principal, placing it to his account, for his trouble in correſponding and negotiating his Principal's Affairs, and in Bills of Exchange, hazarding his Credit.

VI. Bills are negotiated for another when the Factor negotiates Bills in his own Name for the account of another; and by another, when the Bills are negotiated in the Principal's Name by another in Commiſſion.

VII. Circumſpection and Prudence is very requiſit both in him that employes, and in him that ſerves others in Commiſſion; and

a Merchants principal care in Exchanges (of this Nature eſpecially) is to ſee that he hath a ſufficient and able perſon to correſpond with, whether he draw and charge his Bills upon him, or remit his Bills to him; and he muſt not only have reſpect to his Ability, but to his Fidelity alſo; for an Able, but Knaviſh Correſpondent may ſerve his own Ends with the Moneys his Principal hath provided for him to diſcharge his Bills with, and ſuffer his Bills to return with proteſt (as *Shaw* and *Snawdon*, two *Engliſh* Factors at *Hambrough* lately did.) But,

VIII. A Factor that hath a Cordial, Real and Able Principal, who doth not uſe to abridge him of his Proviſion, is obliged to improve all his Abilities and Faculties in the true and faithful Service to him, and ſhould ſeek his Intereſt and Advantage as his own, (which the above-named Kn—— never did) but if the Principal will not allow the uſual Proviſion, nor Poſtidge of Letters, nor Courtagie, &c. doth force his Factor one way or other, in the broad or the long, to make up his Diſburſements, that he be no looſer.

IX. Factors are obliged to a due Correſpondence, and by the firſt Poſt to give an account what they have negotiated in their *Principal's* Affairs, with all the Circumſtances thereof,

thereof, *viz.* the Sum, the Courſe, what Conditions, and with whom.

X. A prudent Principal will require of his Factor, though he hath credited him for the Bills negotiated, all the Circumſtances thereof, and the Factor is obliged to adviſe thereof; and in caſe he hath bought Goods, not only to declare who is his Chapman, but alſo in caſe he hath remitted Moneys for his Principal's account, whereof he hath not yet received the Bills, to give an account who is his Drawer; and ſo, if he hath drawn, who is his Remitter, *&c.*

XI. The Principal is obliged, as ſoon as he receives advice of any Negotiation done for his account by his Factor, to approve or diſprove of the ſame. But,

XII. The Principal is not obliged to approve of all that his Factor doth; but if the Factor hath exceeded, or not followed his Orders punctually, though what he hath done were never ſo prudently managed, and with a good Intent, and in deſign for the moſt Advantage and Intereſt of the Principal, yet he may diſprove of the ſame, and if he can make any Damage appear, he may make him allow of it. But again, on the contrary, if the Factor hath followed Order, and hath not

not tranſgreſſed nor exceeded his Commiſſion, then the Principal muſt approve of what is done by his Factor, though it turn not to account, but be greatly to his loſs.

XIII. The loſs that is by Exchange (or any other concerns) if the Factor hath followed Orders ſtrictly and punctually, muſt be born by the Principal, for whoſe account the Negotiation is. And,

XIV. Such a Factor that follows Orders, does not amiſs, though he fore-ſee, if he ſhould delay, or follow his own Conceptions, it would be more profitable for his Principal; and becauſe Exchanges are as variable as the Wind, and many times as if made, do precipitate without any known Cauſe or Reaſon; therefore a Factor muſt not exerciſe his Speculative Philoſophical Faculty and Reaſon what is profitable or not for his Principal, but muſt follow Orders preciſely, if he poſſibly can, unleſs he certainly and abſolutely know, that it will be very prejudicial to his Principal ſo to do.

XV. So then, Orders muſt ſtrictly, promptly and punctually be obſerved; for if a Factor act without, contrary to, or above Order, and his Principal approve not thereof, the Negotiation, whatever it was, remains

mains done as for the Factor's account, and he muſt bear the loſs thereof. Yet,

XVI. That known Rule, *Volge Order, & dort Qualick* (i. e. follow Order, though to the Principal's loſs) is not alwayes to be obſerved, if the Factor ſee that by following Order he ſhall infallibly prejudice his Principal; for elſe he deals not honeſtly with his Principal, nor as for himſelf, but makes it plainly appear, that if he get his Proviſions he cares not whether his Principal ſink or ſwim, and its therefore beſt of all in ſuch caſes, for the Factor not to perform the Commiſſion, but wait for ſecond Orders if he can. For,

XVII. A Principal hath not alwayes regreſs againſt the Factor, for the loſs that doth enſue upon the not performing the Commiſſion, although the Facor hath promiſed to effect his Orders, and could have done it. But,

XVIII. If he act any thing contrary to Order, he is alwayes obliged to make ſatisfaction for the Damage and Intereſt, &c. *Sigiſm. Scaccia.* pag. 391.

XIX. If a Factor exceed his Order, its not in the power of the Principal to take ſo much of the Negotiation for his account as his

his Orders were, and regulate the Affairs accordingly, but he muſt either totally approve or diſprove of what the Factor hath done, and ſo either take all or none, as its done by the Factor.

XX. If a Factor tranſgreſs his Limits and Orders, and give advice thereof to his Principal, and does conſent, that in caſe he diſprove of what he hath done, the whole Affair and Negotiation ſhall be reduced to his Orders, the Principal muſt content himſelf therewith, and be ſilent.

XXI. The Factor that can and will not act to his Principal's advantage, cannot have a quiet and peaceable Conſcience; neither if he can negotiate his Affairs under or above the courſe and limits that he hath given (and ſo more to his advantage) can he detain the advantage for himſelf.

XXII. A Factor renders himſelf ſuſpected if he do not adviſe his Principal of the true Courſe, but makes his Bills in a Forreign Denomination of Moneys. As for Inſtance: At *Amſterdam* the cuſtom is to exchange on *Dantzick* in *Pounds Flemiſh*, at 216 *Groſhe Poliſh Money*, or elſe for a *pound Flemiſh*: Now if the Bills made at *Amſterdam* be made in *Poliſh Gulders* and *Groſhe*, and not in *Pounds Flemiſh*, it

it presently reflects suspition upon the Factor, as if he had clipt the Course.

XXIII. If one Factor hath one and the same Commission from divers Principals, (whether in Exchange or other Affairs) without any Limitation, and he doth effectually perform the said Commissions, but perhaps in different Courses, or at several Prices, that he cannot possibly reduce them to an equality, then its not contrary to Reason that he let that Principal, which to him is (or may prove) the best, have the most advantage; but yet he is obliged so to manage the Affairs that one Principal shall not have all the most advantagious, and the other all the most disadvantagious Courses and Prices; but he must endeavour to give all satisfaction and content as far as he can, that he may with confidence answer them all.

XXIV. If a Factor hath Orders to one and the same purpose, from divers Principals; but one limits him to a Course and Price, the other not; if he can, and doth effect both their Commissions at the limitted Price and Course, or yet more for their advantage, then its but just that the Principal that gave not limits should be preferred, if there be any advantage; because if the Commission could not have been effected at the limitted

limitted Courſe and Price, he muſt have been content to have ſtood to and ſuffered the loſs.

XXV. If a Factor hath a double Commiſſion from one Principal about drawing and remitting, he muſt not effect the one, unleſs he know how to effect the other (or if to buy and draw, he muſt not firſt draw and then buy) if he do the one without the other, its but an half effected Commiſſion, and will remain for the Factors Account, and he muſt bear the loſs.

XXVI. The Factor may, and muſt place his Principal to account Courtagie and Mackeleridge, though the Commiſſion was effected without the Interpoſition of either Mackeler or Broger: But that Factor that to ſpare the Courtagie or Mackeleridge, and place it to his Principals Account, over and above his Proviſion, will rather yield to ſome things in the Conditions of the Negotiation (as to give more, or take leſs) does not honeſtly and truly ſerve his Principal as he ought.

XXVII. For Courtagie of Exchanges, whether in drawing or remitting, uſually one *per mille* is allowed for Proviſions for drawing and remitting, each half *per cent*;

but for accepting and drawing both, but half *per cent.*

XXVIII. A Factor that is a Creditor of the *Principal*, cannot detain that Moneys that the *Principal* hath remitted to him, with orders to remit again, or otherwiſe diſpoſe thereof for his Credit, and afterwards effect his Order, value again upon him, or buy upon Credit. *Sigiſm. Scaccia.* pag. 388.

XXIX. If one Partner order another to draw upon him, or upon any other, its alwayes ſuppoſed he may do it either in his own Name alone, or in the Name of the Partnerſhip. *Scaccia.*

XXX. If a *Principal* order his Factor to pay his Bills of Exchange, and place them to account of a third Perſon, it ſuppoſeth that the third Perſon is the Drawers Debtor, and if the Factor do accept of the Commiſſion ſimply, it doth infer an Aſſignation upon the third, or at leaſt *Ceſſionem Nominis*, of whom the Factor muſt ſeek his Re-imburſement. *Sigiſm. Scaccia.* fol. 387, and 480.

XXXI. If a Factor hath order to pay Bills of Exchange, and to place them to the Drawer's Account; or if he pay *ſupra Pro-*

teſt

reſt for the Drawers Account, if the Drawer will not Re-imburſe him, he may by Attachments and Arreſts proceed againſt the Drawer. *Scaccia.*

XXXII. The act of a *quaſi* Factor cannot prejudice the *Principal*, unleſs there can be produced the *Principals* Order. *Scaccia.*

XXXIII. No more then half *per cent.* is due for the Proviſion, both for the Labour and the *Riſco*, if the Factor ſtand *del credere*. The *Italians* allow but one third for both; more than this uſually and cuſtomary Proviſion no Factor can with a good Conſcience take or demand, unleſs it be agreed upon expreſly; and being the *Riſco* cannot be weighed by Ounces and Pounds, and the moſt hazard may be when the leaſt appears, and *contra*, and that he is a Fool that will for ſo little Proviſion run an eminent hazard, therefore its ill to talk of Proviſion for the *Riſco*. *Scaccia.*

CHAP. XXVI.

Of Drawing in Commiſſion.

Rule I.

Drawing in *Commiſſion* is either for the account of him on whom is drawn, who is the Acceptant, or for a third Perſon.

II. When a Bill is drawn for the account of him on whom its drawn, prompt and punctual advice muſt be given him, *What Sum* (and diſtinctly in how many Bills) *what Date, to Whom and When Payable, from Whom the Value, at What Courſe, and How much he will therefore be credited in the Accounr.*

III. Bills muſt not be drawn for the account of a third, without ſpecial order from the Perſon for whoſe account it is, and the Acceptant ſhould alſo adviſe that he is ordered, and will accept for the account of that third Perſon, before the Drawer ought to draw.

IV. When Bills are drawn for the account of a third, punctual advice by the Drawer to the Perſon for whoſe account, and alſo to the Accepter muſt be given.

V.

V. The Accepter muſt be adviſed, firſt, *For whoſe Account, and then what Sum, in how many Bills, what Date, to whom, and when Payable, and from whom the Value.* But to add the Courſe, is not neceſſary, unleſs the Exchange be made in a Forreign or Imaginary denomination of Moneys, wherein the Merchants of that place where the Bill is payable do not keep their Accounts, and when the value of the Bill muſt be paid, according to the courſe contracted for; As for inſtance, Exchanges are drawn at *Amſterdam* on *Dantzick*, *Konigsbrough*, *Stockholme*, &c. in the Pound *Flemiſh*, at ſo many Groſh for the Pound *Flemiſh*.

VI. The *Principal* for whoſe Account is drawn, muſt be adviſed of the Courſe, *On Whom is drawn, What Sum, at What Time Payable, and the Value that he is Credited for:* But to adviſe him how many Bills, or with whom is Negotiated, is not neceſſary at all.

VII. In the making of Bills drawn for the account of a third, ſome Drawers obſerve this Method, in the concluding of the Bill they ſay, *Make good Payment, and place it to Account of N. N.* naming the Perſon, or the two firſt Letters of his Name and Sir-Name, to prevent and obviate an Ex-

ception that the Accepter may make that he accepted not for ſuch an account, nor does ſatisfie the ſaid Bills for ſuch and ſuch an Account, but on the Drawers Account.

VIII. Bills are, and may ſometimes be drawn upon another for a third Perſons account, and yet the Accepter not know the Perſon at all; but ſuch draughts are alwayes made upon the Obligation and Faithfulneſs of the Drawer.

As for Example.

A. B. is ſtraitned for Moneys, and *C. D.* his Friend can ſpare him none; but he hath Credit with *E. F.* of *Amſterdam*, and he will ſerve his Friend with his Credit; but *A. B.* and *E. F.* are utter Strangers one to another, wherefore *C. D.* will value on his Friend *E. F.* ſuch a ſum of Moneys for the account of *A. B.* as he hath occaſion for, whereof he adviſeth *E. F.* and aſſures him that he will be caution for the punctual Re-imburſement. This method of Exchange is alſo practiſed, in caſe *A. B.* is Debtor to *C. D.* and *A. B.* cannot conveniently pay the Moneys, whereupon they both agree that *C. D.* may value on his own Correſpondent, *E. F.* with order to redraw the ſame on *A. B.* the Debtor.

IX.

IX. Sometimes Bills are drawn for the account of a third, by the order of a fourth.

As for Example.

A. B. of *Antwerp* hath order from *C. D.* of *Madrid*, to draw for his Account on *E. F.* of *Hambrough*, but *A. B.* of *Antwerp* finding no Reſcounter, orders *G. H.* of *Amſterdam* to value the ſaid Moneys on *Hambrough* for the account of *Madrid*, by the order of *Antwerp*, which done, he ſhall remit the Moneys to *Antwerp*; or elſe *A.* draws on *B.* with order to reimburſe himſelf, by drawing on *C.* for the account of *D.* but ſuch a Commiſſion *B.* ſhould not accept of, unleſs *A.* oblige himſelf; and when he draws on *C.* he muſt adviſe him, that he draws by the order of *A.* for the account of *D.* and alſo give advice to *A.* and the account alſo; but its not neceſſary, though this Negotiation be for the account of *D.* that *B.* ſhould correſpond with *D.* about it, to which *A.* is obliged.

X. When a Drawer in Commiſſion gives his Bills to any that do not punctually pay the Value, he is then obliged to procure the Value by rigour, and arreſting his Goods and Perſon, and may not give him any time or delay, but upon his own *riſco* and hazard; no, not a day longer than till the next Poſt.

XI. If a Drawer in Commiſſion give the Remitter any time for the payment of the Value, and hath thereby any advantage in the courſe, and placeth the advance to the Principals account; then the Principal upon advice thereof is obliged by the next return of the Poſt to approve or diſprove thereof, and if he be not ſatisfied with the conditions, he muſt let the Drawer have the advantage, and anſwer his Principal according to the price currant.

XII. A Factor that hath order to draw upon a third at ſight, does not wiſely if he draw at any time.

XIII. Above all he ſhould obſerve, not to draw after ſight, but alwayes after date, or at a certain and fixed day.

XIV. If a Factor hath order to draw on a third at price currant, he muſt follow his Order, though it be to the diſadvantage of his Principal.

XV. A Principal muſt be content with the courſe his Factor hath concluded on, though it be to his great diſadvantage, whether it proceed from the courſe of Exchange, or from the Factors little credit.

XVI.

XVI. Sometimes it falls out, that a Drawer having drawn in a diſadvantagious courſe to the Principal, does for certain Reaſons adviſe his Principal of a better courſe than he got, whereby he loſeth ſometimes more, ſometimes leſs than all his Proviſions; and as this is lawful, ſo alſo it cannot be judged Knavery if the Drawer hath got a very high courſe, if he place his Principal the price currant to account, thereby to make good his loſs; but more not.

NB, As this may ſeem diſputeable, ſo alſo doubtleſs its ſtill the beſt way to give the Principal an account of the Remgeltam, and not otherwiſe. For,

XVII. Such a Factor renders himſelf ſuſpected by his Principal, for whoſe account he draws, if he do not adviſe him the true and right courſe wherein he negotiated, as alſo when he makes the Bills in another denomination of Moneys than is uſual and cuſtomary; for by ſo doing he can reckon the courſe afterwards as he pleaſeth.

XVIII. Its very adviſable for Drawers in Commiſſion, that they procure the Acceptance of their Draught (eſpecially when on a third Perſon, and not on the Principal directly) without delay.

XIX.

XIX. When a Factor hath order to buy Goods, and to draw the Coſts and Charges (or part thereof) on a third Perſon, and he knows not, or doth not much confide in his Principal, then its uſual and cuſtomary for the Factor to correſpond with him on whom he hath order to draw, and know whether he will accept ſuch & ſuch Bills for that Principals account, or not; and if he adviſe that he will accept, he is not obliged to accept when the Bills come, *Niſi rebus ſic ſtantibus*, or that he hath effects in hands.

XX. He that hath order to draw on one place, and remit to another for the account of a third, or to remit to one place, and draw on another the ſaid value for the account of a third, he muſt not remit before he know that he can draw, nor draw before he know that he can remit, leſt on the one hand he be in disburſe, on the other, in caſh for his Principal, not knowing how to diſpoſe of it, which cannot but diſpleaſe him; and when he hath an opportunity to do both, he muſt before he conclude make his calculation, whether he can with the courſe anſwer the deſigns and limits of his Friend (if he be limitted.)

XXI. When a Factor hath order to draw

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a juſt and limitted Sum, then he muſt add to the Sum (if it be to conclude an account, &c.) Proviſion, Courtagie, Poſtidge and other Charges.

XXII. In caſe (according to *Caſe* 19.) the Acceptant in Commiſſion adviſe the Drawer in Commiſſion, that he will accept ſuch and ſuch a Sum for their Principals account, and afterwards the Acceptant, on the preſenting of the Bills for acceptance, utterly refuſeth; if the Drawer hath bought and ſhip't Goods, there is no reaſon but the Acceptant ſhould be compelled thereto, becauſe the Drawer had not bought Goods (or remitted, &c.) but upon the advice of the Acceptant; and ſo he, the Acceptant was the occaſion of the loſs. *Scaccia.*

XXIII. But if the Drawer hath not ſhipt the Goods, nor is in any danger of loſing upon that account, then he can demand no more of the Acceptant than Rechange and Charges (ſeeing he gave the occaſion to the loſs) and reparation of his credit, being he ſuffers by having his Bill proteſted. *Scaccia.*

XXIV. If a Principal order a Factor to draw, and he having disburſt Moneys for his Principal, doth draw, the Principal may be compelled to accept his Bills, and pay them.

CHAP.

CHAP. XXVII.

Of Remitting in Commiſſion, and ſtanding Del Credere, i. e. *being Surety therefore.*

Rule I.

HE that remits in Commiſſion, does either remit for the account of him to whom he remits, or for a third Perſon, and he either ſtands *del Credere*, or not for the Remiſes.

II. Remitters in Commiſſion muſt take ſpecial care, that they order the Bills to be made payable to whom the Principal gives order; & if he let the Bills be made payable to his own order, he muſt not forget to endorſe them to his Principals order, before he ſend them away.

III. If a Remitter in Commiſſion hath ordered the Bills to be made payable either directly to the Principal, or to his order, or any other, &c. may (if he think fit) if he hath not ſent the Bills away, or parted with them

them out of his hands, cauſe them to be altered, and make them payable to any other.

IV. When a Remitter in Commiſſion hath ſent his Bill to a third Perſon, by the order of his Principal, and in his Letter of advice hath clearly expreſt for whoſe account it is; then neither he nor his Principal can alter or recal the ſame, to the prejudice of him to whom the Remiſes are made.

In giving of advice, the Remitter muſt obſerve what before was noted in the preceeding Chapter.

V. A Remmitter in Commiſſion, when he remits to one, who lives not in the place where Payment muſt be made, ſhould ſend the *prima* Bill directly to the place of Payment, where Acceptance muſt be demanded, and by Refuſal thereof proteſted; and thus he alſo may have ſpeedy advice himſelf, to ſecure himſelf of the Drawer, from whom he may demand three Bills, and ſend the two other to his Principal.

VI. When a Bill is thus proteſted for Non-payment, and returned to the Remitter, and he procures ſatisfaction, with the Rechange, Charges and Proviſions, then the Remitter need not place any more to his Principals Account on the credit, than what for

for Disburſements it was made Debt; and as for the Proviſion, that is due to the Factor, for procuring of Satisfaction.

VII. Though a Remitter in Commiſſion ſtands *del Credere* for the Remiſes, yet he doth very unwiſely to order the Bills to be made payable to himſelf or order, and then endorſe them; however, this is frequently practiſed by the chiefeſt Bankers and Exchangers, on purpoſe to conceal from the Drawer, to whom they remit; but this is very imprudently done, for theſe Reaſons:

1. The endorſing may be forgotten or neglected, and thence may follow endleſs Diſputes and Conteſts, and great Damage.

2. The Remitter by that means makes himſelf lyable not only to anſwer all damages, &c. to the Principal, but alſo to every Poſſeſſor and Endorſer of the Bill after him: For,

3. By endorſing the Bill he makes it his own Bill, and obligeth himſelf on the account of his Principal, not only for the Value by him received, but for all other Charges and Re-changes.

VIII. When a Remitter in Commiſſion does not ſtand *del Credere* for the Remiſes, then he doth very imprudently to order the Bills to be made payable to himſelf or order, and

and then endorſe the ſame; for thereby he ſtands effectually *del Credere*, and hath no advantage by it.

IX. A Remitter in commiſſion that ſtands *del Credere*, may upon the returning of a Bill for Non-acceptance, contracting with the Drawer for the Re-change and Charges, and receiving ſatisfaction, if he hath not endorſed the Bill, not only be compelled and required to remit the ſame Value to the ſame place, to fall due at the ſame time, or to give order for the payment of the Sum at the ſame time, but he is alſo obliged to give his Principal the advance of the Re-change, &c. But in caſe he hath endorſed the Bill, he may abſolutely refuſe to give him the advance of the Re-change, and the Principal muſt be ſatisfied and content with it, becauſe by his Endorſement he made it his own Bill, and he (as well as any other Drawer or Endorſer) may cauſe the Bill to be ſatisfied at the time appointed, and take the advantage of the Re-change to himſelf.

X. A Remitter in Commiſſion, that ſtands *del Credere*, is not obliged, in caſe a Bill be returned with proteſt, and the Drawer is not able to make ſatisfaction, to make good to his Principal any more than the Value he paid for the Bill; the Re-change & Charges,

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if loſt, are loſt to the Principal, becauſe the Remitter had Proviſion for no greater Sum than the Value he paid; but if he get ſatisfaction for the Re-change and Charges from the Drawer, then he is obliged to make the ſame good to his Principal; but the Proviſions that he receives from he Drawer he may detain for himſelf, and is no way obliged to credit his Principals account for them, unleſs the juſt Sum with the Proviſion and Charges be effectually re-drawn on him, but then he may alſo place his Principal Proviſion to account for his accepting and paying the ſaid Bill.

XI. A Remitter in Commiſſion with *del Credere*, is at the returning of a Bill with proteſt for Non-payment, obliged preſently, and without delay to make good the ſaid Value, or to ſuffer it to be drawn on him, becauſe he ſtanding *del Credere*, does oblige himſelf not only for the ſufficiency of the Drawer, but alſo for punctual payment; but then the Intereſt, Rechange, *&c.* is all for the profit and advantage of the Remitter himſelf, if the Drawer cannot make preſent punctual payment and ſatisfaction, though he afterwards will, and gives ſecurity therefore out of his effects, or otherwiſe.

XII. A Remitter in Commiſſion with *del Credere*,

Credere, giving order for the payment of a Bill protested for Non-payment, may charge his Principal with what he pays effectually more than the Bill was for, or what he disburses more than the value was that he paid, on condition he let the Principal have leave to recover what loss he may have, and the charges from the Drawer.

XIII. A Remitter in Commission with *del Credere*, making the Bills payable to the order of his Principal, or to a third, is obliged (though the said Bill be drawn and endorsed several times in several places, and that therefore the advice of the Bills being protested cannot come in a long time after protest is made to his hands) to answer to his Principal the value by him paid, and that though the Drawer was for some considerable time in credit after the advice thereof might have come to his hands, if it had been sent directly.

XIV. If any remit in Commission with *del Credere*, in his own Bills, then is he, because he is also Drawer, at the returning of his Bills with protest for Non-payment obliged to make good to his Principal the Rechange and Charges, as if he had not been the Drawer himself, but a Stranger——

XV. When any remits in Commission

with *del Credere*, and makes the Bills for the account of him to whom he remits, then the *Risco* of ſtanding *del credere* is ended with the day of Payment; ſo that in caſe the Acceptant (ſuppoſe he were alſo the Perſon to whom the Remiſe was made) ſhould fail the very next day after the Bills became due (or within the uſual appointed reſpit dayes a formal proteſt for Non-payment be not entred) the loſs is the Principals, and not the Remitters in Commiſſion; but if the Acceptant fail before the day of payment, or does proteſt againſt himſelf for Non-payment within the dayes of Reſpit, then the loſs is the Remitters, becauſe he alſo is the Drawer of him for whoſe account the Draught was made.

XVI. When a Remitter in commiſſion hath order from his *principal* to remit to ſome other place (to ſome of his Correſpondents, that he looks on as ſufficient) a certain Sum of Moneys with his *del Credere*, there to wait the Principals order; if the ſaid Remitter adviſe his Principal of the Remiſes, and to whom he remitted, and the ſaid Sums he duely and truly paid, then the Remitter (if the remitted beyond all fear ſhould fail) is not obliged to the Principal, becauſe the *del Credere* hath only reſpect to the remitting of ſuch Sums in ſufficient Bills, and not to him to whom they

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are remitted, by whom the ſaid Sums from the moment of their being paid to him were at the order and diſpoſal of the Principal, and he having no occaſion inſtantly to diſpoſe of them, he did truſt and credit the ſame in the hands of his Correſpondent.

XVII. A Factor having order to draw on one place, and to remit to another the ſaid value, or any part thereof, with his *del Credere*, if it ſhould ſo happen that he could procure no ſatisfaction of the value for his Draughts, he muſt ſuffer the loſs, becauſe the *del Credere* in ſuch a caſe hath reſpect to the whole Negotiation, and not to the Remiſes only.

XVIII. A Factor for an Out-dweller for the ſale of Goods, ſtanding *del Credere* for the Debts, does not ſtand *del Credere* for the Remiſes that he makes to his Principal, iſſuing out of the Debts he hath received, unleſs there be a ſpecial and particular contract concerning it.

XIX. A Remitter in Commiſſion muſt not remit by anticipation in Reſcounter of the advance that is yet for the account of his Principal not come in (or not received) but if he do, he muſt expreſly adviſe him, that the Remiſes are by anticipation, without

his prejudice, though the Moneys to ballance this particular in his account be not yet come in.

XX. And as a Drawer, ſo alſo a Remitter in Commiſſion, with or without *del Credere*, makes himſelf ſuſpected if he adviſe not his Principal of the true courſe of his Negotiation, as alſo when he makes his Bills (or orders them to be made) or accepts of unendorſed Bills, wherein the Sum that is exchanged is expreſt in a Forreign denomination of Coyn, and not in that Coyn wherein the Bills of Exchange uſually and ordinarily are made.

XXI. Becauſe a Remitter in Commiſſion is not obliged to remit, if he can meet with no Bills within the limits of his Commiſſion, and is no wayes obliged to ſupply what is awanting; ſo alſo on the contrary, he is not allowed when the courſe of Exchange is under the limits of his order, to charge his Principals account with a courſe that he limitted; but if he with his *del Credere* credit any that have not gained ſufficient credit, or hath loſt part of it, or that is not well known, and can contract with ſuch a one under the courſe (not under the limits) he may then, taking the hazard of the Bill upon himſelf, charge his Principals account, according to the courſe

courſe of Exchange in the beſt Bills at that time: But if he ſtand not *de Credere*, and his Principal ſhall run the hazard of the Bill, then he doth him wrong if he do not let him have the advantage of the courſe.

XXII. When any hath a remitted Sum, or any other Effects to remit again, in a juſt and warrantable appointed ſum, and would reckon the Proviſion thereof, he is not allowed to reckon Proviſion of the full advance, that his Principal hath by him, but only of the ſum he is ordered to remit; for otherwiſe he will have Proviſion of his Proviſion.

As for Example.

When any Factor hath 1000 Pound *Flemiſh* to remit with his *del credere*, then uſually ½ *per Cent.* Proviſion is reckoned, which makes 40 *Guilders*, and one *per Mille* Courtagie is 6 *Guilders*, and 5954 *Guilders* remitted, is in all 6000 *Guilders*.

But in regard the Courtagie of the ſum Remitted is only *Guilders* 5. 19 *Gr.* at one *per Mille*, ſo alſo the Proviſion is no more then *Ggl.* 39. 14. which make together *Ggl.* 45. 13. ſo that there is 7 *Gr.* or *St.* difference, that the Factor reckons too much in his own Favour.

XXIII. If the Bills of a Remitter, upon his own *del credere*, be returned with Proteſt and he can procure no ſatisfaction preſently of the Drawer, though he get Security, yet if he be forced to diſburſe his own, or borrow Monyes of another at Intereſt, he may place the ſame to the Drawers account, and make him allow the ſame. *Scaccia.*

XXIV. He that remits in Commiſſion, and is negligent and careleſs, dealing with thoſe that are ſuſpected to be Inſolvent, or near failing, muſt bear the loſs and run the hazard, as if he effectually ſtood *del credere*. *Sigiſm. Scaccia.* fol. 411. and 391. Num. 400. *& ſequentibus.*

XXV. He that makes a Remiſe for the Poſſeſſors account, cannot revoke his Order, with the conſent of the Drawer, nor forbid the Payment, but if for his own account, he may. *Scaccia.*

CHAP.

CHAP. XXVIII.

Of being drawn upon in Commiſſion.

Rule I.

IT's the duty of him that is drawn on in Commiſſion, upon the advice of the Draught punctually and without delay to return anſwer to the Drawer, and to adviſe him, whether he accept or no, on the Conditions, and for the Account of him for whom it was drawn.

II. And if the Draught be for the account of a third, then the Acceptant muſt give advice to him alſo, for whoſe Account it is, that ſuch a Sum by ſuch a Perſon is drawn on him, for his Account, and is payable at ſuch a Day, as alſo that he ſhall accept the value for the Principals account or not.

III. He that is drawn upon for the account of a third Perſon, from whom he hath no order to accept, neither is in Caſh for his account, neither hath order to redraw the value on the Principal from the Principal, does wiſely if he ſuffer the Bills to return proteſted for Non-acceptance, unleſs he know

the Drawer very well to be ſufficient and honeſt, and will accept for his account *ſupra Proteſt.*

IV. If any be drawn on for the account of third, whom he will not credit, or from whom he hath no orders to accept any ſuch Draughts for his account, he can and may if the Drawer be ſufficient, accept the Bills *ſupra Proteſt* in honour of the Drawer; but in ſuch a caſe he is oblig'd inſtantly to adviſe the Drawer of ſuch his acceptance *ſupra Proteſt.*

V. He that is drawn on, either for the account of a third, or for the Drawers account, making a difficulty either freely or *ſupra* Proteſt to accept for the one or the others account, may accept the ſame in honour of any one Endorſer *ſupra* proteſt, if he know & dare truſt any one of them, and then he is obliged to give the Drawer, and the Perſon for whoſe account it is, and alſo the Endorſer for whoſe account he accepts, advice thereof, and to ſend the Proteſt and the Acceptance *ſupra* Proteſt in honour of any Endorſer to the ſaid Endorſer, for his uſe againſt his Drawer.

VI. When the Acceptant hath accepted a Bill *ſupra Proteſt* in honour of the Drawer or any Endorſer for want of advice or order, or

Proviſion

Proviſion from him for whoſe account the Bill is drawn, and he ſhall afterwards receive Orders and Proviſion, then he is obliged to free the Drawer and Endorſer from their Obligations, and to adviſe them that he will pay the Draught for his account for whoſe it was drawn, and that he therefore diſchargeth them.

VII. When an Acceptant accepts a Bill with the Drawers Obligation, then he is obliged at the day of payment to adviſe the Drawer, whether he for whoſe account the Bill was drawn did make Proviſion for it, or other wayes give ſufficient order for paying the ſame, and that he therefore diſchargeth him from his Obligation.

VIII. When any is drawn on for the account of a third by one with whom the Acceptant never had any Correſpondency, and therefore knows not his Hand-writing, then muſt great prudence be uſed, though the Acceptant hath order from the Principal to accept the ſame, and muſt in no wiſe accept of any ſuch Bill without a Letter of advice from the Drawer himſelf, that the Hand-writing in the Bill and Letter may be compared.

IX. He that verbally or by Letter hath promiſed to accept of any Bills drawn on him for

for the account of a third, he to whom this promiſe was made relying thereon, gives the third Perſon credit, then he that made the promiſe is obliged to perform it, in reſpect of him to whom he made the promiſe; but if he afterwards refuſe to accept his Bill for the account of the ſaid third Perſon, the Poſſeſſor of the Bill cannot force him thereto by preſent execution, but only in the ordinary legal way.

X. No Acceptant can or muſt accept for his Principal Bills drawn by another for his account, unleſs he hath expreſs order ſo to do, and the Drawer doth in every reſpect fully and punctually obſerve his order, if the third Perſon, for whoſe account was drawn, adviſe the Acceptant thereof.

XI. When a Factor hath order from his Principal to accept a certain Sum from a third, for his account at uſance, and the third draws at ſight becauſe he could not meet with any opportunity according to his Principals order to draw at uſance; in ſuch a caſe the Acceptant may accept the Draught in honour of the Drawer *ſupra* Proteſt, and re-value the ſame upon him, if he hath no order from the Principal how he may be re-imburſed.

XII.

XII. When a Factor hath order from his Principal to accept of any Draughts at uſance from a third, and the third finds no opportunity to draw the ſame till half uſance be expired, and then draws at half uſance, in ſuch a caſe the Acceptant is obliged to accept freely and willingly.

XIII. If any be drawn on in Commiſſion, and is ordered to draw the value again from ſome place elſe, whence he probably can meet with no Moneys, or cannot draw in the limitted courſe, and finds it is not his conveniency to diſburſe ſo much Moneys for his Principals account, then he may, if he cannot do otherwiſe, charge his Bills directly on the Drawer, or any other place, even above the limitted courſe, at the beſt courſe for his Principal that he can procure.

XIV. If any be drawn on in Commiſſion, and he hath accepted the Bill, and the payment is not demanded at the day, then he muſt and may debit the Principal for the ſaid Value, as if it were paid, becauſe he is ſtill obliged for the Sum, at all times, and in all places.

XV. The Acceptant of a Bill in Commiſſion, drawn at time on him, may and muſt, if

if the Drawer againſt the time of payment do again call in the Bill himſelf, and pay the Moneys, demand of him his accepted Bill, and the Drawer is obliged to reſtore it; but he muſt before he part with it clearly expreſs and write upon it, that he himſelf called in the Bill and ſatisfied it, and tear or cut it through with a Knife for a token of its being made void, and the Drawer is obliged at leaſt to allow the Acceptant half Proviſion.

XVI. When a Factor is drawn upon to ſatisfie the Bill out of the Effects or Goods that he hath in his hands to diſpoſe of, then he is alwayes, whatever happen, preferred to thoſe Goods, and muſt have his Disburſments out of them before any other Creditors can lay any claim thereto.

XVII. If any be drawn upon in Commiſſion, and there afterwards be found any difference in their Accounts, as the Sums and Quantities drawn, the Acceptant is obliged to prove his account by producing the Bills, no other Evidence (for many Reaſons) being Proof ſufficient. *Scaccia.*

CHAP.

CHAP. XXIX.

Of being Remitted to in Commiſſion.

Rule I.

IT's the Duty of him to whom a Bill is remitted,

1. To endeavour to procure acceptance.

2. On refuſal to proteſt, if not forbidden, though not expreſly ordered.

3. To adviſe the Remitter of the Receit, Acceptance or Proteſting thereof, and to ſend the Proteſt to him. And,

4. To adviſe any other third Perſon that is or may be concerned in it; and all this without delay by the return of the next Poſt.

II. He that hath Bills remitted to him for the account of a third, or to be at the diſpoſal of a third, cannot place the ſaid Bills either to his own or to the Remitters account, nor to any others account, but he is obliged to obſerve the order of him only for whoſe account, and at whoſe diſpoſal the ſaid Moneys and Bills was ordered and remitted to him.

III. If a Bill remitted for the account, or

to

to be at the diſpoſal of a third, be endorſed or made payable at firſt to the Receiver thereof, or to his order, he that receives the Bill cannot, if he hath adviſed the Perſon for whoſe account, or at whoſe diſpoſal it muſt be, that he hath received ſuch a Bill for his account, or to be at his diſpoſal, revoke his Word to pleaſure the Remitter, but muſt wait for the order of the ſaid third Perſon; but if he hath not writ nor adviſed the ſaid third Perſon thereof, then he may, at the requeſt of the Remitter (or the Remitter at the requeſt of the Poſſeſſor) obſerve the laſt order, or wait for further orders.

IV. When any have Moneys remitted to them in Commiſſion, and the Principal orders the ſame Moneys to be remitted further to ſome other place, or otherwiſe to diſpoſe thereof, if the ſaid Perſon to whom the Moneys was remitted do omit this order, or neglect it, and detains the Moneys by him, the ſame is obliged to make good to his Principal all the loſs and damage he can thereby pretend by the not obſerving his Order and effecting his Commiſſion.

V. If any have Bills remitted to them, to be endorſed and drawn in from other places, and the Principal either limits the courſe at which he would have them re-valued, or orders

orders them to be ſent back; if he cannot negotiate them at the limited courſe for want of Moneys, or Reſcounter, or Credit, *&c.* he does then very unwiſely if he ſend the ſaid Bills back in *blanco*, or endorſed, payable to the order of his Principal, becauſe if the Bills were returned with Proteſt he would make himſelf lyable to anſwer for them; but to free himſelf of the fear of this trouble and loſs, if the Bills be made payable or endorſed to the order of his Principal, and the Principal endorſes them payable to his order, (i. e. the Factors) he may ſcrape or blot out that order, and make it illegible, and ſo ſend the Bills back again. But then again, if the Bills be originally made payable to the order of him to whom they are remitted, the value of the Remitter, and this can no wayes be altered, then its adviſable for him to write on the back of the Bill, that the contents and value was not paid to his order, but to a later order of the Remitters, is yet to be paid.

VI. When any receives a Remiſe for account of another, and the Bill is not accepted, or accepted is not paid at the due time, but proteſted, then the Perſon to whom was remitted, if he hath occaſion for Moneys for the Principals account, he may value the Sum on the Remitter (when he returns the Proteſt and Bills) together with Courtagie, Proviſion

Proviſion and Charges for the Principals account, giving the perſon he draws on punctual advice.

VII. When any hath Moneys remitted to him in divers Bills, for divers accounts, for one more, for another leſs, and rekoning the Sum total of all the Bills, and not adviſing any, which Bills were for this, and which for that, and which for a thirds account, in caſe then one of the Remiſes ſhould be proteſted for Non-payment, then the Poſſeſſor thereof may at his beſt conveniency re-value the ſame on the Remitter, and if he cannot get ſatisfaction there, then the loſs will fall upon all the Bills, for whoſe account the Remiſes were, and every one muſt bear a proportion of the loſs, *pro Rato*, of the Sum he was to have in thoſe Remiſes, and if the Remitter ſtood *del Credere* for any, he muſt ſuffer loſs, *pro Rato*, with the reſt.

VIII. If any have Remiſes made for Draughts that were formerly drawn on him, and fall due before the Remiſes do, and ſo come too late to do the Acceptant any ſervice in order to the ſatisfying of thoſe Draughts, then he may, if he pleaſe, reckon Intereſt for the diſburſe of his own Moneys for the time, at 6 *per Centum per Annum*, and for what is more than fourteen dayes, a full Moneth may

may be reckoned, and half a Moneth for what the time is leſs than fourteen dayes; but if it be not his conveniency to diſburſe his Moneys for the time, he may againſt the time the Draught falls due value the Sum on the Remitter, and keep the product of his Remiſes till his further order: But thus to do will give little ſatisfaction or content to the firſt Drawer, and will not be much for the credit of the other.

IX. A Factor that is remitted to, and then drawn upon, is not very wiſe, or elſe he is eaſily ſatisfied, and would gladly work for nothing that will be content with one Shilling *per cent.* Proviſion, eſpecially if he,

1. Muſt bear the Charges of Poſtidge, and dare not place them to the Principal's Account.

2. Or if the Bills muſt both or either of them be paid in currant Moneys, without the Bank. Or,

3. If the Draughts come ſooner than the Remiſes, and ſo by Conſequence he muſt nakedly credit his Principal. Or,

4. If the Draughts fall due, though but one day ſooner than the Remiſes, and he muſt pay the Draughts before the Remiſes be received.

X. If a Poſſeſſor in Commiſſion proteſt

not in due Time and Form, either for Non-acceptance or Non-payment, he himself is lyable to make good to the Remitter, or him for whose account it was, the Rechange and Charges, though the Acceptant is obliged for no more than the Sum that the Bill is for, and the Drawer, *ipso facto*, discharged. *Scaccia.*

CHAP. XXX.

Of Rechange, and Continuance of Exchange and Rechange.

Rule I.

RExchange in its largest Acceptation, is the Value of a drawn or remitted Sum, Redrawn or Remitted by the Payer, or received of the Value, either to, or on the Place directly from which was drawn or remitted, or to, or on any other Place or Fair.

II. But in a stricter Sense, its taken for the Revaluing or Remitting directly, on or to the first Drawer or Remitter.

III. A true and proper Rechange must also

alſo exactly anſwer the Value of the juſt Sum of that Bill, whereof it is the Rechange.

IV. When any Revalues or Redraws in the aforeſaid manner, to the juſt Sum and Value that he paid, he muſt add Proviſion, Courtagie, Poſtidge, Proteſt, &c. and all other Charges that are uſually reckoned; and this ſum added together, is the juſt ſum to be Revalued.

V. In Revaluing, the Proviſion muſt be reckoned for the ſum that is firſt drawn, Courtagie for the Sum revalued or redrawn.

VI. In Remitting of the juſt Sum, both the Proviſion and Courtagie muſt be reckoned, according to the Sum remitted.

VII. When a Factor Remits, and Revalues the juſt Sum of the Remiſes, and draws a certain Sum, and remits the value to another place, then he muſt reckon his Proviſions of the ſum he remits, and not of the ſum that he draws, and Courtagie for both.

VIII. The Redrawing need not be delayed till after the Draughts are diſcharged, but may freely and without fear of a Reproof be redrawn the Poſt day before thoſe Draughts fall due; for a Factor is not obliged, nor is it always

his conveniency, to disburſe his Moneys, though but for a few dayes.

IX. Neither is it neceſſary, or can it be required of a Factor to Remit, before the Remiſes be received; and if it be done ſooner to pleaſure the firſt Remittent, it muſt alwayes be done under Proteſt, to ſuffer no damage.

X. When a Factor hath the advance of the Remiſes to Remit, he muſt ſtrictly obſerve the Order of his Principal, and may, if he cannot come within his limits, delay the remitting, and let the advance lie by him undiſpoſed of, till the Principals further order.

XI. When a Factor hath occaſion to redraw for the Principals account, for draughts firſt drawn on him, he is not ſo preciſely bound to the Order of his Principal, but can, and may (if he neither will, nor can be in disburſe) redraw, not only according to Order, and within his Limits; but he may exceed the Order and Limits ſet him; and if he hath no Order, may redraw without Order, yea, and expreſly againſt Order if need be.

XII. Factors in redrawing, follow their Orders,

Orders, and obſerve their Limits, when the Debtor for the accepted Bill (*i. e.* the Principal, for whoſe account it was drawn, or for whoſe account the ſame was accepted *ſupra Proteſt*) having ordered and limitted the Acceptant, or him that is to diſcharge the Bill and Draught for his account, how, and when he may revalue, if the Factor do accordingly, or to more and better advantage than the Principals orders or limits were; in this caſe the Principal hath nothing to ſay.

XIII. But its above order and limits, when thus the Factor re-draws on that place and perſon, that his Principal orders, but in a more diſadvantagious courſe than he limitted; and the Principal in this caſe muſt be ſilent and patient, though it be to his loſs.

XIV. And its without order when the Principal and Debtor for the Bill did not or could not make Proviſion for the diſcharge of the Bill, and therefore gave no order how the Acceptant ſhould be re-imburſed, whereupon the Factor draws on him, becauſe he cannot be in diſburſe, or will not, thinking it unadviſable.

XV. And its againſt order when the Principal hath ordered that the Factor ſhall draw

on another place, or at long time; and being the Factor either could not or would not draw on ſuch a place and perſon, nor at ſo long time, he therefore draws directly on his Principal at ſight, or at ſhorter time than he ordered, or redraws on ſome other place or perſon, where he can.

XVI. When an Acceptant of a Bill will revalue without or againſt order, then its moſt adviſable and beſt anſwerable, that he draw directly upon the Debtor and Principal, rather than on any elſe.

XVII. He that is Debtor for a Bill, is and remains ſtill (in reſpect of the Redrawer) Debtor for the Re-change that his Factor draws on him for the diſcount of his Draughts, and this whether he draw directly on the Principal, or on any other third Perſon for the Principals account.

XVIII. When any is drawn upon for the account of a third perſon, and the Acceptant accepts *ſupra Proteſt* for the account of the Drawer, and does adviſe him expreſly thereof at the return of the Poſt, then the Acceptant may (if he get not ſufficient Proviſion from the Principal, or elſe ſufficient orders for his Re-imburſement before the Draughts fall due) revalue upon the Drawer, and

and is not obliged to ſeek his Redreſs firſt on any third perſon, for whoſe account the Draught was. But if the Acceptance was made *ſupra Proteſt* with the obligation of the Drawer, then the Acceptant muſt, if the Drawer require it, firſt ſeek his redreſs on a third perſon, for whoſe account it was drawn; and yet he is no further obliged in this caſe than to revalue on the third perſon; and if his Bill be proteſted, or not accepted, nor paid, then he hath his regreſs upon the Drawer, whoſe obligation he reſerved to the laſt.

XIX. When Proviſion for a Bill, drawn for the account of a third, by the Acceptant accepted *ſupra Proteſt*, with the obligation of the Drawer, is not made by him for whoſe account it is drawn againſt the time that it falls due, but orders are only given to revalue the ſame directly upon himſelf, or on ſome other place, then the Acceptant muſt in this caſe firſt conſult the Drawer, who hath obliged himſelf, before he can revalue the ſame, and adviſe him, that this, notwithſtanding he will yet remain by his obligation till the Sum to be re-valued be re-paid.

XX. When the Acceptant of a Bill drawn for the account of a third, but accepted *ſupra Proteſt* for the account of the Drawer, with

the Drawers obligation, &c. doth re-value on a third perſon at the requeſt of the Drawer, and the ſaid Acceptants Bills are either not accepted, or if accepted, not paid in due time, and ſo are ſent back with Proteſt, then he that diſcharged the firſt draughts, and muſt alſo diſcharge the proteſted Bills, may re-value the ſaid Sum, with the Charges, Proviſions and Proteſt on the firſt Drawer, by whoſe obligation he ſtill remained.

XXI. When a Bill is *ſupra Proteſt* for the account, or with the obligation of the Drawer accepted, and the Acceptant afterwards repents, and is jealous whether the Drawer will really accept of his Re-draughts, then its beſt that the Acceptant ſuffer the Bills to return proteſted for Non-payment; but firſt adviſe him, that he may take new orders for the diſcharge of his Bills.

XXII. If any be drawn upon for the account of a third, and the Bill be freely accepted for the account of that third, ſuch a one at the day of payment hath no regreſs on the Drawer, and the Drawer is not obliged, if the Acceptant re-draw, to accept of his Bills, becauſe the Acceptant by his free acceptance hath diſcharged the Drawer, and is obliged to look for his re-imburſment from

from the third Perſon, for whoſe account he accepted.

XXIII. But in caſe the Principal in any of the 11, 13, 14 or 15 *Caſes* fore-going, will not accept the Bills of the Acceptant redrawn upon him, becauſe they are without, above or againſt order, what ſhall the Acceptant then do? ſeeing without acceptance there is no obligation on any to pay a Bill of Exchange, and the Acceptant was not ſo wiſe as to cauſe or ſuffer the Bills to be proteſted, by which means he could have compelled the Drawer to dance to his Pipe. My Authors, that I remember, have none of them ſalved this caſe; and though it would ſeem to be very reaſonable and equitable, that the Principal ſhould, according to the Laws of Exchanges, be proceeded againſt, *Executive*; yet I cannot ſee that there is any other Remedy for ſuch Factors, but the ordinary one, and to proceed againſt their Principals Action, *Mandati. Sigiſm. Scaccia.*

XXIV. *Scaccia.* If Bills be proteſted for Non-payment, Re-change is due but once, though the Remitter or the Poſſeſſor can recover nothing of the Drawer or Acceptant at that inſtant, and afterwards only Intereſt, till a contract or compoſition be agreed upon; otherwiſe, if Re-change and Intereſt upon

Intereſt

Intereſt ſhould be due in *Infinitum*, the Intereſt would ſoon exceed the Principal, and it would be impoſſible for the poor Debtor to recover, nor is it once due if the Monyes afterwards be paid in the place of payment in due time.

XXV. *Scaccia. Uſura Pœnæ* is ſeldom or never due (as, if you pay not ſo much at ſuch a time, you ſhall forfeit ſo much more) for if Intereſt upon Intereſt be unlawful, much more this; for that Intereſt that doth by ſuperfactation, as it were, produce another Intereſt, can produce no more than in proportion to the Capital; but this is uſually much more, and is only added to ſcare the Debtor, *&c.*

CHAP. XXXI.

Of Exchanges to and from Fairs in General.

Rule I.

BY *Fairs* is meant *free* and *priviledged anniverſary Fairs*, which are held at certain places and times, ſometimes twice, thrice, and oftner in one year, to which all Domeſtick

ſtick and Forreign Merchants are admitted to come and Trade, and for that time to enjoy ſuch Priviledges and Immunities as the Magiſtrates have allowed and granted.

II. The moſt renowned and famous *Marts* or *Fairs* in theſe times in our parts, are *Frankford* on the main, *Leipzig* in *Suchſen* (or *Saxonia*) *Lyons* in *France*, *Modena* in *Italy*, *Beſonſon* (or *Biſenzon*) in *Spain*, and *Bolzane* in *Tyrol*; but at *Amſterdam* there is found no courſe of Exchange but to the three firſt, as *Frankford*, *Leipzig* and *Lyons*.

III. At *Frankford* are yearly two, at *Leipzig* three, and at *Lyons* four Fairs.

IV. And ſo ſoon (and ſometimes before) as one Fair is ended at one place, Exchanges are made on the ſame place for the next Fair; but its ſeldom that any Exchanges are made payable at the ſecond or third Fair enſuing the date of the Bill; yet on theſe conditions Bills may be made and negotiated, and ſuch Exchanges are as obligatory as any other, if the preciſe time of payment be clearly expreſt in the Bills (though ſome are of another Opinion) and the Drawer is obliged at the time to perform the contract agreed on, the courſe, &c. may be as it will.

V.

V. In the reſpective Fairs Exchanges are made not only on other Forreign places, but alſo on the ſame place where the Fair is kept, and that not only between the Fair times for the next Fair, but alſo for the enſuing Fairs in the Fair time.

VI. When a man draws ſimply on ſuch a Fair in ſuch a place, then its to be underſtood of the firſt Fair next enſuing in that place, and the payment muſt be made at the uſual time of payment in that place and Fair.

VII. Its uſual and cuſtomary, when Bills are made on a Fair that is not yet begun, that then the time of payment is expreſt thus, *At the next enſuing Fair, &c.* but if the Fair be already begun, then they expreſs it thus, *At the preſent* Eaſter *Fair*, Michaelmaſs *Fair*, Auguſt *Fair*, *&c.* as the Name of that Fair may be.

VIII. In Exchanging on Fairs, the Drawer is not obliged to furniſh the Remitter with Bills ſooner than about ſo long a time before the beginning of the Fair, that they being ſent *per* Poſt thither, can be there before the Fair begin.

NB, This is the cuſtom in the *Frankford* Fairs at *Amſterdam*, but in the Fairs of *Lyons* and

and *Leipzig* the Drawer muſt inſtantly give his Bill; and though ſome Merchants have endeavoured to introduce this order and cuſtom in the Exchanges on *Lyons* and *Leipzig*, yet it could take no effect, though it would tend greatly to the advantage of the Merchants to have Moneys in their diſpoſal for a little time, to the leſſening of much Proviſion that is now paid to the *Lyoners* and *Leipzigers*, and to the advantage of the Mackelers.

IX. If the Drawer do not preſently furniſh Bills to the Remitter, then he ought, as ſoon as he receives the Value, give under his Hand and Seal a Writing, ſpecifying the Contract, and obliging himſelf to the performance of it, and to deliver the Poſſeſſor Bills for the value, againſt the beginning of the Fair.

X. He that remits to a Fair, muſt demand the Bills ſo timouſly that he can ſend them away to be there before the beginning of the Fair, or at furtheſt, within the uſual time of Acceptance; for by the late arrival of Bills, ſometimes in the times of Payment great diſorders and confuſions do happen.

XI. The Acceptance of Bills payable in Fairs, ought not to be done but in the Fairs, nor

nor need the Acceptant declare whether he will accept or no, before the beginning thereof; but the Fair being begun, the deſigned Acceptant muſt declare, within a certain fixed preciſe time, whether he will accept or no, or elſe the Poſſeſſor muſt proteſt for Non-acceptance.

XII. If Acceptance be made before the beginning of the Fair, and the Bill be payable, then the Aeceptance is Obligatory, though it be againſt the Order, Stile and Cuſtom of the Fair, nor can the Acceptant repent, (but too late) nor any way be relieved.

XIII. The diſcharging and paying of Bills in the Fairs, is for the moſt part done by verbal Reſconters, whereof thoſe that make Reſconters do afterwards make and keep exact and perfect Notes: In ſome Fairs they uſe only to note the Reſconter in their Day-Books, or Memorial, or Pocket-Books, that can be blotted out again: But in other Fairs the Reſconters muſt be clearly expreſt on Paper, written with Ink, in Books for that purpoſe, called Reſconter-Books, that in caſe of any Diſpute or Accidences, all Frauds may be prevented; and when the Reſconter is once made, its as effectual as if the Bill were paid with ready Caſh.

XIV.

XIV. If any Payments cannot be made exactly by Reſconter for the juſt Sum, then on the laſt day of the Pay-Week, if the time will not permit to tell the Sum that day in Specie, they give and take from one another (after they have adjuſted the Sum) a Note for the Value that one or the other muſt pay, and then they can receive it the Week following.

XV. When on the laſt day of the Pay-Week, (or of payment) the Acceptant does not diſcharge the Bill, neither by Caſh nor by Reſconter, then the Poſſeſſor is obliged to proteſt, or elſe he loſes his regreſs on the Drawer.

XVI. In all Fairs there are but few, at moſt, and in ſome but one Notary Publick allowed of, who is to proteſt, and muſt keep a Protocal of every Proteſt, to which every one muſt have free acceſs to ſee and know what Bills for Non acceptance, and what Bills for Non-payment are proteſted, that they may, if they pleaſe, in honour of the Drawer or Endorſer, accept and pay them.

XVII. All Fairs have alſo their own proper Judges, (*pro Tempore*) which uſually are choſen

choſen out of the Merchants that frequent the Fair, and are uſually three in Number, one Conſul and two Counſellors, who after hearing of the partys, do decide all Differences and Diſputes among them; no Lawyers nor Advocates being admitted to plead, and their Sentence is definitive, and muſt be executed, unleſs the party that is grieved do appeal to the higheſt Court of Judicature that is in the place where the Fair is kept.

NB, This laudable Cuſtom is in other places obſerved, appointing a Colledge of Commerce to hear and determin of all Controverſies, either in Merchandizing or in Exchanges among Merchants, where the Proceſs is ſhort, and without delay; and every one is himſelf (ſome caſes excepted, becauſe of the Infirmities of the partys) obliged to propound and plead his own Cauſe, and to urge their Reaſons, and exhibit their Evidence, and without any other Formality of a Proceſs ſentence is ſpoken, from whence an Appeal lies to the higheſt Juriſdiction in that place, only and ſurely this (as alſo a Court for the determining of Differences about Sea-affairs) is very neceſſary and uſefull in all places of Commerce, and very advantagious to the Trade of any place: Nor can I ſee any Reaſon, but both theſe may very well be under the authority of one Judicature, if every City of Trade would take

take ſuch meaſures as theſe, queſtionleſs they would tend much, 1. To maintain the Credit and Honour of honeſt Merchants: 2. To the diſcovery of many Frauds: 3. To prevent great loſs by tedious and chargeable Proceſſes: 4. To the promoting of the Intereſt of the Trade: And 5thly, To the Credit, Repute and Fame of the City it ſelf.

NB, Every Trader to theſe particular Fairs, will know the Ordinances and Laws concerning Exchanges there made, ſo that it will not be neceſſary to be large upon theſe; therefore what the Author hath largely inſiſted on, in the three following Chapters, I ſhall abridge, and only hint to ſome ſelect Caſes.

CHAP. XXXII.

Of Exchanges from Amſterdam *to* Frankford *on the Main*, & Vice Verſa.

Rule I.

AT *Amſterdam* a Remitter can diſpoſe of his Monyes to any place (*Venice* excepted) upon time, in Exchange, making the Bills payable to his Order, and draw the

ſame in again, without having any Correſpondent there, at the place where the Bill is payable, or allowing any Proviſion at all; and on the contrary, a Drawer on *Frankford* at the Fair time, can draw on *Frankford*, and can ſupply, Adjuſt, Reſconter or Prolonge, without having any Correſpondent or Factor there.

II. Becauſe by an old Cuſtom, Bills need not be accepted that are drawn on *Frankford's* Fair, till the beginning of the Fair, wherein the Bill is payable; therefore its not uſual to make Bills till againſt that time, unleſs it be otherwiſe conditioned.

III. Wherefore it were neceſſary, that the Drawer ſhould give a Bill or Obligation in the interim; for the furniſhing of Bills on ſuch terms as are agreed on.

IV. When the Drawer on the Fair, does remit with his Remitter to the ſaid Fair, the Sum, which he before drew, then that parcel doth mortifie it ſelf; if he remit with another, then he can aſſign his Remitter on his Drawer; ſo alſo when a Remitter does redraw the ſum he remitted, then he obliges himſelf to his Remitter to furniſh him with Bills, which when he demands, he aſſigns him on his Drawer.

V.

V. He that muſt have Bills to ſend to the *Frankford's* Fair, muſt take ſpecial notice that it be clearly expreſt and named, *By Whom, and On Whom, To Whom, and From Whom the Value is aſſigned.*

VI. The Aſſignations on the *Frankford's* Fair, are of the ſame Virtue and Power that Endorſments on a Bill are.

VII. And the Poſſeſſor of a *Frankford's* Fair Bill, that proteſt for Non-payment, cannot only have his Regreſs by the firſt Drawer, but on any of the Aſſigners, as if they had been Endorſers, and hath over and above this Priviledge, that he may chuſe which of the Aſſigners he pleaſes, to demand Satisfaction of, being not bound to his man.

VIII. A prudent and circumſpect Remitter on the *Frankford's* Fairs, will not receive from his Drawer any Bills to extinguiſh the Sum that the Remitter hath furniſhed, if they be made by a third, and made ſimply payable to his Remitter, or his Order, the value from the firſt Remitters Drawer, becauſe for ſuch Bills the firſt Drawer is not lyable to anſwer to his Remitter; but on the contrary, the Remitter is made anſwerable to the Drawer, but the

Bills muſt be made payable to the firſt Remitter or his Order, the value of the ſame from the Drawer.

IX. On *Frankford's* (and at no other) Fair, men may treat and condition for the payment of the Bill at the return from the Fair, that is, inſtead of delivering Bills (or negotiating them at *Frankford* in the Fair time, or diſcharging them on the day of payment) to pay the ſame at the return (or ſooner or later, as the condition is, at a certain fixed day) at *Amſterdam*, and then according to the time the courſe of Exchange is proportioned.

X. The uſual times of payment at return are, for the *Eaſter* Fair *ultimo Junii*, for the *Michaelmaß* Fair *ultimo Novembris*.

XI. If at any time the Term be prolonged till the return, then the Drawer ought to cauſe the conditions to be noted on the back of that Obligation he gave to his Remitter, whereby he obligeth himſelf to deliver Bills, or make payment at the Fair, or elſe to mortifie or vacate the old, and make a new Obligation.

XII. A Merchant that hath credit at *Amſterdam* for the *Frankford's* Fair, can at any

time

time, for ſo ſhort and ſo long a time, as he pleaſeth; draw upon the Fairs, and make uſe of the Monyes as he ſees occaſion, and can at any time before the beginning of the Fair remit the ſame thither, in order to make payment, or he can prolong it till the return, or vacate the former Bills, and make new ones on the next Fair, which Negotiation will be of no more loſs to him than ſometimes uſual Intereſt is, ſeeing he hath no Proviſions to pay, and only Courtagie for the Mackelers, and is far more honourable and profitable for the Drawer than any other kind of Negotiation where Factors muſt be uſed, &c.

XIII. If any fail in their punctual payments, either at the Fairs, or their returns, or in delivering Bills according to agreement, and it be ſufficiently manifeſt, then againſt ſuch a one (if there be ſuch an obligation) there is the ſame Law, as if there were proteſted Bills of Exchange, *viz.* ready execution, with attachment upon his Goods, and arreſt upon his Perſon, and in caſe of failing the Re-change is alſo due, &c.

XIV. At *Frankford* are two Fairs yearly, the *Eaſter* and *September* Fair, the one begins fourteen days before *Eaſter*, the other on the *Sunday* that is before or after, or on the day

of the birth of the Virgin *Mary*, if this day fall on a *Monday*, *Tueſday* or *Wedneſday*, then the *Sunday* before; if on a *Thurſday*, &c. then after, if on a *Sunday*, then on that ſame day; they each continue fourteen dayes, the firſt Week is called, *The Acceptance Week*, the latter, *The Payment Week*; the times of Acceptance continues from *Mondayes* in the Morning till *Tueſdayes* at nine a Clock in the the Morning, but may be accepted any time that Week, and ſo long the Poſſeſſor is obliged to ſtay; but if acceptance be not made that Week, in the next Week, he may and muſt proteſt, though he may proteſt ſooner if he pleaſe, if the acceptance be abſolutely denyed: All Acceptances here muſt now be written; verbal Acceptances are not valid.

XV. If an accepted Bill be not paid on *Saturday* in the *Pay Week* before the Exchange time, or at Exchange time, then the Poſſeſſor ought to proteſt for Non-payment before the Sun ſet.

CHAP.

CHAP. XXXIII.

Of the Leipzig *Fairs.*

Rule I.

LEipzig hath three Fairs yearly, the *New Years*, the *Jubilate*, and the *Michaelmaß Fair*; on which dayes, or the dayes after, according to the *Old Stile*, the said Fairs begin; they continue but eight dayes wherein they trade, and buy, and ſell; the firſt or ſecond dayes after the Fairs are begun, acceptance is demanded, but if the Acceptant will, he may delay acceptance till the *Pay Week* after the Fair, which continues five dayes after the expiration of the aforeſaid eight dayes.

II. The Poſſeſſor may if he will proteſt ſooner, but he muſt not ſend the Bill away till the Fair be wholly concluded, but muſt wait to ſee if any appear to honour the Bill *ſupra Proteſt*; no Proteſts are admitted of after ten a Clock at Night on the laſt day of the Fair, and if the Poſſeſſor proteſt not before that time, he loſeth his hold that he had of the Drawer; if none appear to make payment of a proteſted Bill within three dayes

after the Fair is fully expired, then may the Poſſeſſor with the firſt Poſt return the Bill with the Proteſt.

III. For Exchanges made at *Amſterdam* on *Leipzig*, Bills muſt inſtantly be given, but the Acceptant need not accept or declare whether he will or no till the Fair time; here alſo Bills that are endorſed are admitted of.

IV. At *Naumbrough* is alſo yearly one Fair kept, it begins on *Peter* and *Pauls* day, and is by ſome called a *Fourth Leipziger Fair*, in regard all the *Leipzig* Traders trade thither, it continues eight dayes; on the firſt and ſecond dayes Acceptances are demanded, and at the utmoſt, all the Bills muſt be paid on the third of *July*; but if proteſted, the Bills are not returned till after the fifth of *July*, and after that day, if no payment follow, the Bills and Proteſts muſt be returned with the firſt occaſion.

CHAP.

CHAP. XXXIV.

Of the Fair of Lyons *in* France.

Rule I.

AT *Lyons* in *France* are yearly four Fairs, the *Royal Fair*, which begins the *Monday* after *Epiphany* or *Three Kings day*; the *Eaſter Fair*, which begins on St *Niſiers* day in *April*; the *Auguſt Fair*, which begins on St *Dominicks* day in *Auguſt*; the St *Huverts Fair*, which begins on that day in *November*.

II. Every Fair hath its Payments; the *Fair Royal* hath its time of Payments from the firſt to the laſt of *March*; the *Eaſter* Payments begin the firſt and end the laſt of *July*; the *Auguſt* Payments begin the firſt and end the laſt of *September*; and the St *Huverts* Payments begin the firſt and end the laſt of *December*.

III. At *Amſterdam* Bills are made payable at the enſuing or preſent Payment; but its not uſual before one Payment hath begun to negotiate on a following, but on a ſecond or third Payment.

IV.

IV. Bills for Parcels, negotiated on *Lyons*, muſt inſtantly be given, and that before the Remitter pay the Value; but Bills made payable at the Fair, are not payable till the payment of that Fair whereof they are made payable, nor need they be accepted till the beginning of the times of Payment, and may be deferred till the ſixth day after the beginning of the reſpective payments, but no longer, within which time Proteſt muſt be made: All Acceptances muſt be made in writing.

V. None can by a full Power negotiate or accept any Bills, unleſs he firſt ſhow his full Power to the Judges of the Fair, and cauſe it to be regiſtred, which is to be obſerved in all Fairs as well as at *Lyons*, and without this no full Power, &c. is of any effect againſt the Principal; but the Creditors muſt look to him who pretended the full Power.

VI. Proteſts for Non-acceptance need not be ſent away before the ending of the reſpective terms of Payments, but advice muſt be given thereof before; the time of payment begins the day after the aforeſaid ſix dayes of acceptance are expired, unleſs it be a Holy-day, and then the day after, and continues to the end of the Moneth; none may pay a Bill

Bill before the ſixth day, but on his own hazard, and after the laſt day of Payment the Poſſeſſor may refuſe, if he will, to accept of payment, and may return the Bills and Proteſts, and demand Re-change and Charges of the Drawer or Endorſer; but Proteſts for Non-payment may be made any time within three dayes after the term of payment is ended; if then not made, the Drawer and Endorſers are not lyable to anſwer.

VII. Poſſeſſors of proteſted Bills muſt ſeek their Redreſs on the Drawers and Endorſers within a certain and fixed time, *viz.* all Bills drawn or made within the Kingdom of *France* within two Moneths time; drawn on *Italy*, *Sweitzerland*, *England*, *Holland*, *Germany* and *Flanders* within three Moneths time; *Spaniſh*, *Portugal*, *Polonia*, *Sweeden*, *Denmark* Bills within ſix Months time, or elſe he loſes his Redreſs on the Drawer and Endorſers.

VIII. All Bills payable in any payment are accounted fully paid and ſatisfied, in reſpect of the Inhabitants, within one year, and of Strangers within three years after the ſame ſhould have been paid, and the Poſſeſſor of the Bill hath no redreſs on the Acceptant after ſuch a time, unleſs he make it appear that he endeavoured to procure payment and could not.

CHAP.

CHAP. XXXV.

Of Debt-Exchanges.

Rule I.

IN a pure and real Exchange the Drawer receives Monyes of the Remitter, and gives Bills of Exchange, wherein he promiſeth himſelf, or by his order to pay the value he received, according to the conditions in ready Moneys; but in mixed or Debt Exchanges the Drawer receives no Monyes, but is Debtor, and gives Bills to his Creditor (who is reckoned and accounted of as the Remitter) for payment of his Debt.

II. Such Bills are made either for the recovery of old Debts, or elſe to aſſure the Creditor of preciſe payment for thoſe Goods the Debtor hath bought at time.

III. Whether the Debtor make the Bills payable by himſelf, or by any other, or whether the Debtor and Creditor agree about the courſe of Exchange or not, the Debt doth change its nature, and the Debtor that gives a Bill of Exchange upon himſelf, or another,

another, doth make himſelf lyable to the Law of Exchanges, and may upon failure of payment be proſecuted with ready execution, attachment upon Goods, and arreſt upon his Perſon.

IV. A wiſe Creditor will at the Receipt of ſuch a Bill from his Debtor make an abſolute agreement and contract concerning the Courſe, and preſently upon the Receipt thereof, credit his account of Goods, and debit his account currant for the Value.

V. Its not neceſſary in a Bill to expreſs whether the Value was paid in Monyes, or was Reſcontered, or in Goods, *&c.* if the Debtor do but effectually receive the Value, or it tend to the diſcharging or leſſening his Debt.

VI. He that gives a Bill for the payment of an old Debt, or for Goods bought, *&c.* he muſt demand of his Creditor an Acquittance, wherein he acknowledgeth ſatisfaction for ſuch an old Debt, or ſuch Goods, in ſuch and ſuch a Bill of Exchange received, or for ſo much of the Debt as the Bill of Exchange reacheth to.

VII. And in ſuch a caſe the Creditor, if wiſe, will demand a *Recipiſſe* (or a Note) from

from his Debtor, wherein he confeſſeth the Receipt of the Value of ſuch a Bill, either in an old Debt, or for Goods bought, either for the full payment thereof, or for leſſening the ſaid Debt.

VIII. When a Creditor hath received a Bill from his Debtor in full, or in part of his debt, he muſt not be perſwaded by his Debtor in caſe he at the day of payment be not punctual, under pretence to leſſen the Charges, and not to diſguſt the Debtor, not to follow the ſtrict courſe and law of Exchanges by proteſting, &c. nor ſhould give the Acceptant longer time if he deſired it, unleſs the Debtor do give him under his own hand, that if he do ſo, it ſhall be no prejudice to him, and this notwithſtanding he ſhall have the Law in force againſt himſelf, as if he had actually proteſted in due form and courſe; for without this the Debtor might diſown any ſuch order or requeſt made to the Creditor, and in caſe he pay not, ſet his Creditor at defiance, as having neglected his time and right, and he the Debtor is therefore not obliged to anſwer.

IX. When the Creditor receives a Bill from his Debtor, by him drawn on another in another place, with requeſt to demand the ſame, and in caſe of payment to place it to his

his account in full, or part of payment of his Debt, then let the Creditor ſpeak with the Debtor, whether he ſhall draw or remit the product, and alſo know of him, by whom he ſhall cauſe demand to be made, that in caſe of loſs there may be no diſpute.

X. The Bills that a Creditor makes himſelf upon his own Correſpondent, at the requeſt of the Debtor, when he cannot conveniently pay that which he ſhould pay at the day of payment, muſt be reckoned to be mixed or Debt Exchanges.

XI. When it falls inconvenient for the Debtor to pay his Debt at the time, and he deſires a longer time, promiſing ſatisfaction for the time, if it alſo fall inconvenient for the Creditor to wait, then uſually, if the Creditor be ſatisfied in the ſufficiency of his Debtor, at his requeſt he may draw on his own Correſpondent for his Debtors account, with order to revalue the ſame at the day of Payment on his Debtor.

XII. If a Creditor draw thus for the account of his Debtor, he ought (to the end the Debtor may know what Sum he is to pay for the Re-change) make thoſe Bills ſingle and apart for the juſt Sum that his Debtor muſt pay, or at leaſt order his Correſpondent

to

to keep an account of ſuch a ſpecified Sum a-part, and to revalue the ſame.

XIII. And to diſtinguiſh the account apart, the Creditor or Drawer uſually orders the Acceptant to draw on the Debtor, with his obligation, or upon himſelf, for the account of the Debtor.

XIV. Its alſo uſual, that one Friend to pleaſure another, draws on his Correſpondent *per Cento* apart (for a ſeperate account, and to be kept apart) that the Friend may have the uſe of the Monyes till the time of the payment of the Re-change.

XV. In all caſes the Acceptant looks upon the Drawer, who muſt anſwer for the Draughts and Re-draughts, but the loſs by Exchange, and the Charges muſt come to the Debtors, account or to his account whom to pleaſure, or for whoſe account the Bill was drawn.

CHAP.

CHAP. XXXVI.

Of Diſcounted or Reſcontred Exchanges.

Rule I.

IN a real compleat Exchange there is uſually four ſeveral Perſons concerned, as, the *Drawer*, the *Remitter*, the *Acceptant*, and the *Poſſeſſor of the Bill*; but in a Diſcounted or Reſcontred Exchange the *Drawer* and the *Remitter* may be one and the ſame Perſon, and that in four ſeveral caſes; As,

1. When he hath to draw and to remit both together, from and to one place, and both for his own account.

2. When he hath to draw for one and to remit for another.

3. When he hath to remit to one, and to draw for another account. And,

4. When he muſt draw for another, and remit for a thirds account.

II. He that is Drawer and Remitter both for his own account, and draws on one, and remits to another Correſpondent, may make and calculate the courſe of Exchange in his

Books as he pleaſeth, and need give no man any account thereof; but he that Diſcounts for anothers account either way, muſt without delay either adviſe his Correſpondent, or his Principal, or both, the true courſe of Exchange, as then it was effectually agreed on at that time on the Exchange, and in caſe the Courſe hath either greatly advanced or declined that day, then in equity he ought to allow his Principal the middle Courſe.

III. In a diſcounted Bill, where the Drawer is the Remitter alſo, he ought to expreſs the ſame in theſe words [*The Value in my ſelf*] but if he will not that the Acceptant ſhould know ſo much, then he may make the Value of any other, adviſing the Poſſeſſor, that he himſelf is the Remitter, and the other Name is but added *pro Forma*.

IV. If any draw or remit for anothers account, who is not named in the Bill, its not neceſſary to adviſe that the Value is diſcounted.

V. He that diſcounts in himſelf, and gives advice thereof, whether it be done with or without a Bill in *Formâ*, neither may nor can re-call the ſame, without the conſent of thoſe that are concerned.

VI.

VI. He that hath an opportunity to diſcount, may place Courtagie to his Principals account, though he pay none; and ſo if any ſtand good for the Remiſes, or ordinarily hath done, may alſo place uſual Proviſion to account, though he run no *riſco* or hazard.

VII. One and the ſame Perſon may in divers other reſpects, repreſent two, or more Perſons, in Exchanges; for he can be, 1ſt, *Drawer* and *Poſſeſſor*. 2dly, *Drawer* and *Acceptant*. 3dly, *Remitter* and *Poſſeſſor*. 4thly, *Poſſeſſor* and *Acceptant*. 5thly, *Drawer*, *Remitter* and *Poſſeſſor*.

VIII. When any makes Bills, payable to himſelf or order, he is both Drawer and Poſſeſſor of the Bill, till he draw it in or endorſe it: *Scaccia*, The ſtile of Merchants hath introduced this Cuſtom, contrary to the Axiom of the Common Law, that a man may pay to himſelf.

IX. But Drawers ſeldom make Bills payable to themſelves, when he they draw upon is with them, or they themſelves with others in good Credit.

X. Great Prudence is to be uſed in negotiating Bills, payable to the order of the

Drawer, becauſe ſuch Bills are uſually drawn on thoſe that begin to halt, and are accepted before they be drawn in, and the Drawer makes uſe of them to furniſh himſelf with Moneys in a neceſſity.

XI. He that makes Bills payable by himſelf, and accepts of the ſame to pay them, he is both Drawer and Acceptant.

XII. When a Drawer accepts his own Bill, and promiſeth to pay the negotiated Sum, then he need not accept the ſame again; But if he direct the Bill to himſelf, as if he were a Stranger, then let the Poſſeſſor or the Remitter get him to underwrite, *Accepted, &c.*

XIII. When a Bill, payable by the Drawer, is not proteſted within the Reſpit dayes, then the Poſſeſſor doth not loſe his Right, becauſe he as Acceptant, is, and remains obliged; but he looſeth his Redreſs on the other Endorſers, if it be endorſed.

XIV. When the Reſpit dayes of a Bill, payable by the Drawer, are expired, then the Poſſeſſor is obliged to proceed, according to the Law of Exchanges, by ready Execution againſt his Perſon and Goods, without being obliged

obliged to return the Bill and Proteſt, to the place from whence it was done.

XV. When a Remitter orders the Bill to be made payable to himſelf or order, then he is both Remitter and Poſſeſſor, till he endorſe and negotiate it.

XVI. Remitters order their Bills to be made payable to their Orders, ſometimes becauſe they know not themſelves to whom they ſhall be payable, ſometimes becauſe they will not let the Drawer know to whom they remit.

XVII. A Remitter remitting for anothers Account, does very ill, if he (though he ſtand *del credere* for the ſame) order the Bills to be made payable to himſelf, or order, and endorſe the ſame to his Correſpondent; the Reaſons are in the 8th Rule of the 27th Chapter.

XVIII. When the Remitter orders his Bills, to be made payable to him on whom the Drawer draws, (who is the Acceptant) then is the Poſſeſſor the Acceptant, and the Bills are then made, *Pay to your ſelf.*

XIX. When any is Poſſeſſor and Acceptant of a Bill, and he will not accept of the

ſame for account of him, for whom it is drawn, then he may and muſt proteſt againſt himſelf, as poſſeſſor of the Bill, (if the Remittent and the Drawer be two diſtinct Perſons) as if he the Acceptant were another diſtinct Perſon for Non-acceptance, and ſend both the Bill and the Proteſt back to him from whom he received it, that he may make uſe thereof againſt the Drawer. And thus alſo he may if he will accept *ſupra Proteſt*, in honour of a Drawer or Endorſer, &c.

XX. When any Acceptant is to pay to himſelf, and he returns Anſwer that he hath, or will accept the draught, then he cannot repent thereof, nor cannot afterwards, by a Proteſt for Non-acceptance, or Non-payment, help himſelf.

XXI. If any be drawn upon in a Bill payable to himſelf, and he accepts of the ſame, in ſuch a caſe the day of Payment is reckoned to be the very day it falls due, which paſt, the Bill is accounted as paid, no reſpit dayes being allowed.

XXII. When a Drawer makes Bills, payable to himſelf, or order, and Reſconters, or finds the value in himſelf, then is he Drawer, Remitter and Poſſeſſor. The Drawer can alſo be the Remitter and Acceptant, and

and Poſſeſſor and Acceptant, and ſo in three reſpects, he can repreſent three diſtinct Perſons; thus alſo the Remitter can be the Acceptant, and Poſſeſſor and Acceptant, and this all at once; but theſe caſes ſeldom happen.

XXIII. In Exchanges, two Perſons can each of them have two Relations; As,

1. One can be *Drawer* and *Remitter*, the other *Poſſeſſor* and *Acceptant*.

2. *Drawer* and *Acceptant*, and *Remitter* and *Poſſeſſor*.

3. *Drawer* and *Poſſeſſor*, and *Remitter* and *Acceptant*.

And he that repreſents two or more Perſons, may do all that any of them might do, if diſtinct and ſeveral Perſons.

XXIV. When a Drawer and Remitter, and the Poſſeſſor and Acceptant are but two diſtinct Perſons, each of them repreſenting a double Perſon, then there is a double diſcount, or reſconter; and this for the moſt part happens betwixt Correſpondents, that have open Accounts each with other, and for other accounts, and one hath occaſion for Moneys in one place, the other in the other. But this Exchange can be performed without formal Bills of Exchange, alone by advice and correſpondence, about adjuſting the

courſe of Exchange; but if any third Perſon be concerned therein, then its moſt adviſable to make formal Bills of Exchange.

XXV. The advice of the Aceeptant to the ſaid Drawer, that he hath taken notice of, and conform to the advice from the Drawer hath placed the Draught to account, &c. doth ſo firmly oblige the Acceptant, (whether a third Perſon be concerned therein or not) as if he had accepted a formal Bill of Exchange.

XXVI. When the Acceptant is Poſſeſſor of the Bill, and the Drawer is the Remitter alſo, and the Acceptant ſcruples the acceptance of the Draught, according to advice; in ſuch a caſe its not neceſſary for him to proteſt againſt himſelf, becauſe its enough for him to return the Bill, with advice, that he is not inclined to accept the ſame.

XXVII. When a Drawer draws upon himſelf, and the Remitter orders the Bills to be payable to himſelf or order, then the Drawer is the Acceptant, and the Remitter the Poſſeſſor of the Bill; and in this form are uſually all Debt-exchanges made (whereof we treated in the former Chapter.)

XXVIII. It may fall out, but its very ſeldom,

ſeldom, that a Drawer makes Bills payable to himſelf, by the Remitter, and then the Drawer is Poſſeſſor, and the Remitter Acceptant of the Bill.

The Remitter may alſo be an Acceptant, when he hath to remit for his own, or any others account, and negotiates with him, who muſt draw upon him, which may ſometimes fall out.

XXIX. If the Poſſeſſor of a Bill be indebted to the Acceptant, a juſt and liquidated Sum already due to him, the Acceptant may diſcount with him, and this is good and effectual Payment: But if it be not a liquidated Sum, the Acceptant cannot diſcount, nor if the Poſſeſſor who procured the acceptance, have endorſed it to another, unleſs he can prove that the preſent Poſſeſſor hath paid no Value, and that this was done by them only *pro forma*, and to defraud him. *Scaccia.*

CHAP.

CHAP. XXXVII.

Of Conditional Exchanges, or Bills of Bodomery.

Rule I.

IN ſuch Bills as theſe the Drawer doth not abſolutely oblige himſelf to payment, but on a certain condition agreed upon.

II. And in theſe Bills the condition muſt be clearly expreſt, on which condition the Acceptant muſt accept and pay, elſe not; wherefore if the condition be not expreſt, theſe kinds of Bills are lyable to great Diſputes and Conteſts.

III. The Acceptance of a conditional Bill obligeth the Acceptant (whether he be the Drawer himſelf, or any other) abſolutely to the Payment, if the Condition agreed upon be performed, or the Poſſeſſor will oblige himſelf to the performance thereof.

IV. The Poſſeſſor of ſuch a Bill is ſometimes obliged to perform the Condition, ſometimes not; Exchanges grounded upon impoſſible

impoſſible, or unlawful, or indecent Conditions, are, *ipſo facto*, null and void.

V. When he is abſolutely obliged to the performance of the Condition, its not enough for him to mortifie the Bill, and not demand Payment thereof, but he is obliged to make good to the Acceptant the Loſs and Intereſt that the Acceptant, or any other concerned therein, for Non-performance of the Condition, is likely to ſuffer.

V I. When the Poſſeſſor of a Conditional Bill is not abſolutely obliged, then if any thing happen without the Poſſeſſors fault, that may hinder him from performance of the Condition, this does not alwayes free and diſcharge the Drawer or Acceptant, but he is in ſuch a caſe obliged to pay the Bill, though the Poſſeſſor do not perform the Condition, if he will but make good the loſs to the Acceptant or Drawer.

As for Example:

A. lives here, and contracts with *B.* dwelling at *Venice*, That he ſhall provide him a Pack of Says, which Pack the ſaid *A.* ſhall buy for the account of *B.* at the loweſt Price, but ſhall ſend them to *Venice* on his own *Riſco*, and ſhall have for his Proviſion 2. and for the disburſe of his Monyes and the *Riſco* 15 *per Cent.* but *B.* ſhall be obliged to pay the

the Costs, and Charges, and the whole Product eight dayes after the arrival of the said Pack of Says at *Venice*. This all agreed upon and done, the Pack of Says is Shipped, and the account thereof sent, and *A.* at the same time values upon *B.* the whole Sum, and makes the Bill as followeth.

Amsterdam, Octobris 23. *anno* 1680. *per Ducat*—

"EIght dayes after the arrival of the Pack "of Says, *No* 1. as in the Margent, at "*Venice*, pay upon good delivery, for the "Value of the same, to *C.* the Sum of "Ducats——*adiea.*

To B. *in* Venice. *A.*

Now when *B.* accepts the Bill, then he is obliged upon the delivery of the Pack to pay to *C.* the Sum expreſt in the Bill, though the Says ſhould fall conſiderably in Price before that time. But if the Says are loſt at Sea, and never arrive, then the Acceptance is null and void, and the Bill is mortifyed; and if they are damaged only, and do arrive, then *B.* muſt receive them, and pay the Bill he accepted; but he muſt deduct from the Value, as much as impartial Merchants ſhall judge the damage may be eſteemed at, becauſe *A.* is conſidered as the Inſurer.

VII. Amongſt conditional Bills, Bills of Bodomery

Bodomery may be reckoned, that is, Bills that are made upon the Keele of the Ship, which are accidentially conditional, in regard its not in the power of the Poſſeſſor, but only depends on Providence, to give a Ship a proſperous Voyage.

VIII. The Bodomery-Bills that are uſually made at *Smyrna*, and other places in the *Levant*, wherein the Shipper acknowledges the Receipt of ſuch and ſuch Goods into his Ship, from *A.* to deliver the ſame upon ſafe arrival to *B.* and that the ſaid Goods are incumbred with a Debt of a 1000 *Reals*, upon Bodomery at ſo much *per cento*, the value received of *C.* payable ten dayes after the arrival of the Ship;

To *D.* for his own Account, 300 *Reals.*

To *E.* for the Account of *F.* 300.

To *G.* for the Account of *H.* 400 *Reals.*

This being underwrit by the Shipper, is as much as a conditional Exchange, which if *B.* accept, then he is obliged to make good and pay the Sum, and may receive the Goods, paying the Shipper his Freight and Avaridge; but if there be extraordinary Avaridge, or if the Goods be damaged, then the Sum of the damage, and of the extraordinary Avaridge, muſt be deducted from the Sums that *D. E.* and *G.* are to receive, they being as Bodomerers or Aſſurers.

IX.

IX. They to whom Goods are addreſſed that are incumbered with Bodomery, are as little obliged to accept of the Bodomery-Bills, as an Acceptant is obliged to accept Bills drawn upon him; but if they have once accepted, they are then according to the Law of Exchanges obliged to make punctual Payment at the day appointed.

X. If any to whom Goods, burdened with Bodomery, are addreſt, refuſe to accept the Bodomery Bills, then the Poſſeſſors of the Bills are obliged to make Proteſts for Non-acceptance, and then may requeſt the Magiſtrates to authorize him to receive the Goods, and to ſell them, and diſpoſe of them to him that will give moſt, or that they may be put into the Hands of another to be diſpoſed of, that out of the product of the Goods the value of the Bodomery-Bill may be ſatisfied; but they muſt have a care of acting any thing in this matter, without the Authority of the Magiſtrate, nor muſt they without his Authority, admit any other to honour the Bills, and receive the Goods, and diſpoſe of them at his pleaſure.

XI. When all this is done by the authority of the Magiſtrate, as above is declared, and there is found to be more made of the Goods

Goods than was required, to the diſcharge of the Bodomery-Bills, then that may remain in the Hands of the Perſon that had the Goods in diſpoſal, or be paid into the Hands of the Magiſtrate, for the uſe of the true Owner of the Goods. But if there be ſhort of what the Sum in the Bodomery-Bills requires, then the Poſſeſſors of the Bills have no Redreſs upon him, to whom the Goods were addreſſed, nor upon the true and proper Owner thereof, no, not upon the Factor or Loader of the Goods, or the Drawer or Receiver of the Moneys paid upon Bodomery, unleſs he hath by a ſpecial Contract obliged himſelf thereunto.

XII. Among conditional Exchanges may be reckoned, thoſe Bills that are given upon account of any Wager made, or for the aſſurance of things that are yet *in dubio*.

XIII. Bills made upon account of a Wager, &c. are either ſingle, or reciprocal and mutual.

XIV. Single are they, when one gives Moneys, and the other receives it at the ſame time, accepts a formal Bill of Exchange, payable to him that gave the Moneys, for the payment of a greater Sum than he received at the day of Marriage, or at the ſurrender

render of ſuch and ſuch a Belſagured City, &c. or at any other uncertain and dubious event.

XV. If in the caſe of Wagers, if Moneys be not given by the one, and received by the other, the Law allows no advantage againſt him that gives the Bill; but if he have received Moneys, then he is obliged to repay the ſame, with Intereſt, and no more.

XVI. Conditional Exchanges for aſſurance, are two-fold; for ſome tend to the Security of the Drawer or Remitter, ſome to the Security of the Poſſeſſor.

XVII. Conditional Exchange, that is, for the Security of the Drawer or Remitter, are ſuch Bills as an Out-dweller makes, or cauſeth to be made, for the diſcharge of other Bills by him accepted, which muſt be paid in another place, or ſuch as any man makes, to diſcharge Bills drawn, but proteſted for Non-acceptance, or if accepted, for Non-payment, if the Drawer had timely notice of his Acceptants failure, or that he would not pay.

XVIII. Conditional Exchanges, that are for the Security of the Poſſeſſor, are either ſuch as are for the Security of the Re-

Re-payment, and are made after this manner:

EIght dayes after the producing of an Acquittance from E. *whereby he acknowledgeth to have receiv'd of* D. *of* Antwerp 200 l. Flemiſh, *I promiſe and oblige my ſelf to pay to* D. 1200 Ggg. *currant Monyes, for the Value of the ſame Sum. Yours,*

A.

XIX. Or elſe for the Security of requiting ſome favour and ſervice done, and then Bills may be made thus:

FOurteen dayes after I am made Alderman, (or after I have obtained ſuch and ſuch a Suit of Law, &c.) I promiſe and oblige my ſelf to pay to A. *the Sum of* 100 l. Flemiſh, *the Value, &c. Yours,*

A.

XX. When a conditional Bill is not accepted, or if accepted, is not paid, then the Poſſeſſor may proteſt and ſeek his Redreſs and the Recovery of his loſs by the Drawer.

XXI. In a Proteſt of a conditional Bill, whether for Non-acceptance or Non-payment, the Poſſeſſor muſt look to this, and obſerve that he inſert and prove that the con-

dition was performed, or elſe that he was ready and willing to perform the ſame, or elſe the Proteſt is of no value.

XXII. *Sigiſm. Scaccia.* In caſe the Poſſeſſor of a conditional Bill, who is abſolutely obliged to the performance of the Condition, would mortifie the Sum, and will not demand payment, nor perform the condition, then the Acceptant may compel him thereto, by depoſiting the Monyes, and proteſting againſt the Poſſeſſor for Non-performance of the Condition, and for all Damages, and preſently thereupon proceed againſt him, according to the Law and Cuſtom of Exchanges, and the reaſon is, becauſe he, the Poſſeſſor, would have done ſo againſt the Acceptant, if he had been tardy.

XXIII. If a Condition, whereon an Exchange-Contract is grounded, were once poſſible after the Poſſeſſor had procured Acceptance of the Bill (if the Poſſeſſor were obliged to perform it) or after the Remitter received the Bill from the Drawer (if the Remitter obliged himſelf to performance) and afterwards ſhould be morally impoſſible, they neglecting the opportunity, yet they will be oblig'd to make good all the Damage and Loſs that the Drawer or Acceptant, or any other concerned, can prove they ſuffer by

by it, becauſe this Condition was the cauſe of the Contract. *Scaccia.*

XXIV. But as the Poſſeſſor of a Bill is obliged to demand and procure Acceptance, &c. ſo in this caſe the Acceptant or the Drawer, &c. is obliged to demand Performance of the Condition; for, *Eventus Conditionis, non conſtituit debitoram in mora, ſine interpellatione. Scaccia.*

XXV. A Condition may be ſaid to be performed, though it be not actually performed by the Poſſeſſor, if another do it by his order, or if another that is concerned in it own it as *quaſi* performed, and this will oblige the Acceptant to pay: As thus; If *Titius* pay to *Sejus*, then pay to *Thomas*, *&c.* If *Sejus* and *Titius* diſcount, or if *Sejus* acknowledge himſelf ſatisfied, the Condition is performed. *Scaccia.*

CHAP. XXXVIII.

Of Exchanges pro Forma.

Rule I.

WHen any hath a Debtor, on whom he would draw, and yet would

not run the hazard of having his Bill returned, he may make Bills *pro forma*, payable to the order of his Friend, or to his Servant, and to make the Bill more formal, he may insert, that he hath received the Value of another, though he hath not.

II. Another mans Name, in a Bill *pro forma*, may be used as Remitter, with or without his knowledge or consent, and sometimes a feigned Name may be used.

III. It may be done without his knowledge or consent, when the Bill is made payable to a third, or any other Person, or his order; and in such a case a known or unknown Person may be named as the Remitter, yea, a feigned Name, it may be what it will.

IV. Another mans Name may be used as Remitter, with his consent, when the Bill is made payable to him, or to his order.

V. When a feigned Name is used, or any true Name, without the Persons knowledge, and only *pro forma*, then the Drawer must necessarily advise the Person to whom, or to whose order it is payable, that the Value is only set *pro forma*, and the Name is feigned, or used without the Persons knowledge, and

and therefore he the Drawer ſends the Bill himſelf. But if any mans Name be uſed with his conſent and knowledge, then uſually the Bills are made payable to his order, whoſe Name is uſed, who is Remitter *pro forma*, and then this ſaid Remitter *pro forma* acts as if he were effectually the Remitter, demanding Acceptance and Payment in his own Name; and thus the Correſpondent need not know but that the Bill is real, otherwiſe he muſt know the truth, and that the Bill was only made *pro forma*.

VI. There ought circumſpection to be uſed, in conſenting to the making uſe of a mans Name, in a Bill *pro forma*, payable to his order; for ſuch Bills cannot be drawn in, nor will they be paid, but upon the endorſing of the Bill, by him to whoſe order its payable; and an Endorſment, if it be only at the requeſt of the Drawer, and *pro forma*, doth oblige the Endorſer to the Poſſeſſor of the Bill really and abſolutely, and not formally only.

VII. When a Bill, wherein another mans Name is uſed *pro forma*, is made payable to his order, and is drawn in, or negotiated and endorſed by the ſame Remitter, *pro forma*, then the Poſſeſſor of the Bill muſt make good the value to the Endorſer, and

not to the Drawer, though he know certainly that the Endorſers Name is only uſed *pro forma*, except the Endorſer hath given an Order under his Hand, to make the ſame good to the Drawer, or unleſs the Endorſer be abſent, and at the requeſt of the Drawer had only endorſed it in *blanko*, and yet then the Drawer is obliged to ſecure the Poſſeſſor of the Bill from all Damage and Pretences that the Endorſer may hereafter make.

VIII. He that to pleaſure his Friend, ſuffers his Name to be uſed *pro forma*, as the Remitter, willingly and knowingly, and does draw in and endorſe the ſaid Bill, whether he receives the Value himſelf, and afterwards ſends it, or pays it to the Drawer, or whether he aſſign the Drawer upon it, and lets him receive it himſelf, he ought (though the whole Negotiation concern not him at all) to take notice thereof in his Books, and formally enter it, at leaſt, in his Waſte-Book for Memories ſake.

IX. When a Bill, *pro forma*, is made payable to any mans order, and is drawn in and endorſed, the Endorſer doth moſt prudently if he receive the Value himſelf, or order the Drawer to aſſign upon him, that the Drawers Aſſignation may be his Acquittance.

X.

X. When any draws upon his Debtor, and to prevent Loſs by proteſting, makes the Bills payable to the order of any that will, after Acceptance procured, draw it in, or order his Correſpondent to receive it, and *pro Formâ* makes the Value received, he muſt obſerve well whoſe Name he makes uſe of, and to whom he ſends ſuch a Bill, that in caſe the ſaid Remitter, *pro Formâ*, ſhould happen to draw in the ſaid Bill, and the ſame ſhould be proteſted for Non-payment, and the Endorſer ſhould be Inſolvent, he the ſaid Drawer ſhould be obliged to pay the Rechange to the Poſſeſſor of his Bill, without having received the Value, or if the ſame ſhould be paid, he do not change a bad Debtor for a worſe, and quite loſe his Monyes.

XI. When a Drawer dare not draw in the Bill, the Value wherefore he hath made received *pro Formâ*, fearing the Acceptant ſhould not accept, or not pay if he did accept, and therefore makes his Bill payable directly to ſome living at the ſame place with his Debtor, and does adviſe the ſaid Correſpondent, that for Reaſons known to himſelf, the Value is made received *pro Formâ* only; in ſuch a caſe the Poſſeſſor muſt be prudent, in caſe the Drawer is not very ſufficient and honeſt, for he ought not pay the Monyes he

hath received on that Bill, unleſs the Perſon whoſe Name is uſed in the Bill, do order him to follow the Directions of the Drawer in the diſpoſal of it, or unleſs the Drawer give him other ſufficient ſatisfaction.

XII. Among Exchanges *pro formâ* muſt be reckoned; thoſe Bills that are drawn on Debtor, but are ſent to the Drawers Creditor to be paid to him, or his Order, the value of the ſame *pro formâ*, concerning which Bills he makes no agreement with the Creditor concerning the Courſe, only requeſting him to procure Payment, and place it (when received) to his account.

XIII. A Debtor that gives ſuch a Bill to his Creditor, may demand a Receipt from the Creditor, wherein he acknowledges the Receipt of the Bill, and that his Name, as Remitter, is only uſed *pro Formâ*, and that he doth oblige himſelf to demand the ſame, and when paid, either to remit it or make it good to the Drawer (or Debtor) according to the courſe of Exchange; but in caſe he receive not the Sum, the Drawer or Debtor ſhall not be put to any further Charge for Proteſts, Poſtidge, *&c.*

XIV. A Creditor that accepts of ſuch a Bill from his Debtor would do well and wiſely

wiſely to let the Drawer or Debtor give him a Note under his hand, whereby he deſires the ſaid Creditor to ſend his Bill to his Correſpondent, or to demand acceptance and payment, that in caſe the Monyes ſhould be received by the Correſpondent, but not remitted to the Creditor, or being remitted, the Remiſes are not paid, or the Creditor not proteſting in due manner and form, &c. the Debtor may have no occaſion to complain of his Creditor, and force him to ſtand to the loſs.

XV. When in ſuch a caſe the Debtor agrees with his Creditor concering the courſe, whether before or after the Acceptance thereof, and does credit his account currant for the ſum; or elſe when another, whoſe Name is uſed *pro Formâ*, agrees for the courſe with the Drawer, and pays him the Value, then this Exchange, *pro Formâ*, loſes its nature, and becomes real and actual; and in caſe of proteſt, the Drawer is obliged to make good the Re-change and Charges.

XVI. When ſuch a Bill, at the requeſt of the Debtor, is by the Creditor drawn in, and the Value is made him good in the account currant; in ſuch a caſe the loſs by Re-change and the Charges come to the account of the Drawer or Debtor; but if the Creditor

Creditor draw in the Bill without the order of the Drawer or Debtor, then he himſelf muſt bear the loſs, if any happen.

CHAP. XXXIX.

Of Dry-Exchanges.

Rule I.

MErchants Exchanges do properly conſiſt in a giving Monyes in one place, to receive the Value at a certain courſe agreed on, in another. Dry Exchanges conſiſt in a giving of Monyes alſo, but the repayment is to be made after a certain time in the ſame place where the Monyes was given, and ſuch a ſum certain over and above, as the giver of Monyes can get and agree for, which is Intereſt at leaſt, and ſometimes more. So that the diſtance of places is a Subſtantial or Eſſential part of Exchanges, and as the Marrow and Soul thereof, which being awanting in theſe ſorts of Exchanges, they are therefore called, *Cambia Sicca*, Dry Exchanges.

II. In this kind of Exchanges, ſometimes the Sum to be repaid, for the Sum received, is fixed, determined and certain, ſometimes uncertain and accidental. III.

III. When the Sum to be re-paid is fixed and certain, then the Giver hath a certain and fixed Profit and Advance, which is alſo contrary to the nature of Real Exchanges, and this is properly called the *Uſurers Exchange*, by which they may more ſecurely oppreſs their Debtors.

IV. For uſually they have one of theſe three Deſigns in their Eye, that diſpoſe of their Monyes after this manner:

1. *That they may be ſure of their Monyes at the appointed time.*

2. *To get a certain Intereſt, and to have better ſecurity for their Monyes than the uſual Bills, Bonds and Obligations are.* Or,

3. *To drive an unlawful Trade of unlawful Uſury.*

V. He that on this manner diſpoſeth of his Monyes, can at any time when he pleaſeth, make himſelf Maſter thereof again, if the Bill be made Payable to himſelf or order; for he can then at any time negotiate, and draw in the ſaid Bill with Reputation and Credit, and let it be drawn in from any other place, which he cannot do with any other Obligations, Bills, Bonds, or Recogniſances, *&c.*

VI.

VI. And ſuch a one doth ſecure his Monyes better by ſuch a Bill of Exchange than by any Obligation whatever, becauſe if the Bill be not paid at the day punctually, he hath preſent Execution ready at hand, by Attachment and Arreſt, and he hath preferrence before all other Demanders, as if he had a Judgment confeſt.

VII. An Uſurer hath alſo this advantage by ſuch Bills of Exchange, that the Sum to be paid is only mentioned in the Bill, not the Sum that was received, ſo that it cannot be known what Intereſt ſuch a one receives.

VIII. With theſe kind of Exchanges, the Exchanges upon *Frankford's* Fair and Return have a great Affinity, when the Drawer and Remitter do negotiate together upon the Return, &c.

IX. The Value agreed upon to be re-paid is uncertain and accidental, when in the bargaining they agree concerning the Courſe to ſuch and ſuch a Place or Fair; but the Drawer is obliged to pay his Monyes in the place where he received it, and in ſuch a Courſe as ſhall be at the time of payment, to ſuch a certain place.

As for Example:

E. gives *F.* 1000 *Ggd.* on the *Frankford's* Fair, with condition, that the Sum ſhall not be paid at *Frankford*, but at the return of the Fair at *Amſterdam*, and that in ſuch a courſe as Exchanges ſhall be made at from *Frankford* to *Amſterdam*, payable at the ſame time.

This ſort of Exchange is very frequent and uſual in *Italy*, and is condemned by the *Papiſts* as unlawful, grounding their Decree againſt them upon the *unlawfulneſs and ſinfulneſs of gaining Monyes upon Monyes, or giving Monyes upon Intereſt, or to have a certain profit for the Loan, or Exchange of Monyes.* But our common Uſurers account this no ſin—— *Sigiſm. Scaccia.* he only ſeems to plead for the lawfulneſs, and doth wiſely aſſert, *That if there be Extortion, or if commutative Juſtice be not the ground of theſe Exchanges, they are Unlawful.*

CHAP.

CHAP. XL.

Of Bills of Exchange being loſt.

Rule I.

WHen any Bills are made for a Sum of Monyes, uſually two or three are made of the ſame date and tenor, that if one be loſt, the Remitter or Poſſeſſor may make uſe of the other.

II. When the Poſt goes uncertainly to any place, on which Exchanges are made, or by Sea, or when the Remitter orders the Bills to be made payable to his order, with a deſign to ſend the firſt directly to the place, that Acceptance may be demanded, and to draw in the other ſome other way by endorſing it, &c. then three or four Bills may be made, &c.

III. When the Remitter declares to the Drawer, that the Bills he received are loſt, and that he cannot find them, and deſires the Drawer to re-pay the Value to him, offering to ſecure him from all damage for the future; then the Drawer doth very imprudently if he

he do it, though the Monyes was for his proper account, and he could otherwiſe do it with little inconvenience to himſelf, becauſe the Remitter muſt be content to take new Bills, and cannot compel him to reſtore the Value.

IV. And in giving new Bills the Drawer muſt uſe prudence and circumſpection, and ſee that he make his new Bills of the ſame date and tenor of the former, only adding this difference, that if he had given a *prima* and *ſecunda* before, he now follow the number, and give a *tertia* and *quarta* Bill. And yet,

V. No prudent Drawer will after the day of Payment of his former Bills, give his Remitter *tertia* and *quarta* Bills, unleſs the Remitter give ſufficient ſecurity to indemnifie the Drawer.

VI. Its the Duty of all Poſſeſſors of Bills, to have a ſpecial care of their Bills, and to keep them ſafe; and a prudent Merchant will, upon the Receipt of any Bills with blank Endorſments, fill them up, and perfect them, leſt he ſhould loſe them, and another find them.

VII. As ſoon as a Poſſeſſor obſerves that he

he hath loſt a Bill, he ought inſtantly, at leaſt before the day of Payment, to adviſe the Acceptant thereof, that he pay it to none but to him or his order, and if any other come to receive it, to take notice of him.

VIII. When the *prima* accepted Bill, which is made payable to Order, is at the place where the payment muſt be made, and he to whoſe order the ſame is payable, againſt the day of payment, when he will draw in the *ſecunda*, cannot find the *prima* accepted Bill, but hath loſt it, and hath no *tertia* nor *quarta* Bill from the Drawer, nor can get them from the Drawer, he being dead or abſent, &c. yet the Parcel may be drawn in and negotiated, if the Endorſer (in caſe his Hand-writing and Seal be unknown to the Acceptant) do ſend a full Power and Letter of Attorney to him to whom he would have it payable, to receive the ſame; but if the Endorſers hand be well known, and he himſelf be to be credited, then an order in writing to the Acceptant, to pay it to ſuch a one, is ſufficient, he engaging to ſecure him from all damage, &c.

IX. But then alſo, a prudent Acceptant will pay no Bill that is payable to order, though by him accepted, if the ſame, or another of the ſame tenor, is not endorſed as it

it ſhould be, and ſhown to him, no, not upon the order of him, whom the Remitter or Endorſer hath ſo impowered, till the very laſt reſpit hour, and not then neither, but upon the delivery and ſurrender of his accepted Bill.

X. When the Poſſeſſor of a Bill, made payable to him directly in *Banco*, cannot find or hath loſt the Bill, then there is little or no danger to either Party, for there Bills are paid or writ of, without the demanding or delivery of the Bills to the Acceptants: But if the Bills are payable *per* Caſh, or in currant Moneys, then a prudent Acceptant will not pay a Farthing till the laſt hour of Reſpit, if his accepted Bill be not preſented, and then only to the Poſſeſſor himſelf, or to his order, and upon his or their Security from further damage.

XI. When any hath loſt his accepted Bill, payable to order, the *ſecunda* whereof unaccepted is orderly endorſed till it come to him to whom its payable; when he preſents the ſaid Bill on the day of payment, the Acceptant is obliged to pay the ſame upon Security given, either to deliver up the accepted Bill, or to indemnifie the Acceptant, and to diſcharge from all future demands of the ſaid Sum.

XII. When any misseth his accepted Bill, whether directly payable to the Possessor, or to his order, and the Possessor thereof pretends to have lost it; or if the Possessor hath advice, that his Remitter hath remitted him at sight, *such and such a Sum, in such and such a Bill*, &c. and when he opens his Letter, he finds no such Bills; or if he receives not the Letter, wherein the Bill was inclosed, but hath advice thereof by the next Post, and finds that the Day of Payment draws near, then he may demand Payment upon his Letter of advice, offering Security to the Acceptant, to free and discharge him from all future demands of that Sum, upon the account of that lost Bill; and if the Acceptant will not then pay it, then he can assign the Value upon him, and if he pay not then, he may protest for Rechange and Charges.

XIII. When an accepted Bill, protested for Non-payment, is lost, then the Drawer is not obliged to make good the Rechange and Charges, unless he get sufficient Security, to indemnifie him, and free him from all future Demands, with promise to restore the Sum with the Interest, that the Drawer paid for the Rechange and Charges, in case it be made appear that the Bill pretended to be lost, should afterwards be paid by

by the Acceptant, or any other *ſupra Proteſt.*

XIV. When an accepted Bill is loſt, or cannot be found, then the Remitter or the Poſſeſſor cannot proceed againſt the Acceptant by preſent Execution, nor againſt the Drawer, but they muſt make uſe of the ordinary Means and Methods, as if it were ſome other kind of Debt; for a Proteſt cannot be made but upon an accepted Bill.

XV. The Security for diſcharge of thoſe that pay accepted, but loſt Bills, ſhould be limitted to a certain time, after the expiration whereof the Security ſhould be vacated.

XVI. *Marius* adviſeth, that ſo ſoon as the Bill is known to be loſt to the party that had it, that he go inſtantly to the Acceptant, with a couple of Witneſſes and a Notary, to ſignifie the ſame to him, and to charge him at his Peril, to pay it to none but thoſe he ſhall order.

XVII. And further he adviſeth, that no man that hath accepted a Bill ſhould refuſe Payment thereof, becauſe the Bill it ſelf is not to be found, for thoſe are but flams and ſandy Foundations: But he aſſerts, that Proteſt being made for Non-payment, upon the

offer of ſufficient Security to ſave him harmleſs, he, the Acceptant, as the wilfull occaſioner thereof, is obliged to make good all the loſs, Rechange and Charges.

XVIII. Suppoſe the *prima* accepted loſt Bill was made payable to him that loſt it, and the *ſecunda* unaccepted Bill, ſhould be made payable to another man, then the Moneys being really paid at the time, to him to whom the *prima* accepted, but loſt Bill, was payable; this Payment is good and warrantable, and the Poſſeſſor of the *ſecunda* Bill, hath nothing to ſay to the Acceptant.

XIX. Suppoſe the *prima* accepted Bill ſhould be found by a Stranger, who demands the Money in the Name of the party to whom payable, or that the true Poſſeſſor ſhould have aſſigned it over to another man, and taken up the Value, yet this all ſignifieth nothing, coming after the time, and the Money being paid to him to whom it was payable (though without the accepted Bill) and he having good Security to be ſaved harmleſs: But he that is guilty of the Fraud may come to ſmart for it.

XX. In caſe a Bill of Exchange be loſt by the Acceptant, with whom it was left to be accepted, or that he hath given the Bill to a wrong

wrong party, or if in any caſe the party that left the Bill for acceptance, cannot have his Bill again, neither accepted nor unaccepted. In this caſe the party that loſt the Bill, muſt give a Note under his Hand and Seal for the payment of the Moneys at the day, to the party to whom it was payable, or to his order, upon the delivery of the *ſecunda* Bill, if it come in time, or upon that Note, if it come not in time, which Note is in all caſes to have the Law and Priviledge of a Bill of Exchange; if the Acceptant refuſe this, Proteſt muſt inſtantly be made for Non-acceptance, and then again at the time the Poſſeſſor, though he hath neither Note nor Bill, muſt demand the Moneys, and if not paid, proteſt for Non-payment.

XXI. He further adviſeth all Merchants, to keep Letter-Caſes, or Paper-Books in their Pockets, to keep Bills of Exchange in, that they may be the better ſecured from loſing.

CHAP. XLI.

Of Letters of Credit.

Rule I.

IN this Chapter we muſt follow the famous *Marius* his advice, the *Hollands* Author, not taking any notice of Letters of Credit in his whole Book, which makes up ſo material a part of the Myſtery of Exchanges.

II. Merchants make ſpecial uſe of all their Letters, and do not only ſafely keep all they receive, but Copy alſo all the Letters they ſend away; and above all things, Letters of Credit ought to be ſafely kept by the Receiver, and fairly copied out by the Writer.

III. Merchants Letters are of ſeveral ſorts, and accordingly have ſeveral Denominations; as, there are Letters of Commiſſion, which are properly orders to Buy or Sell, to Freight and Ship, &c. 2*dly*, There are Letters of advice, which concern Bills of Exchange, whereof we have treated in one Chapter before. 3*dly*, Letters of Freight, which may be either Charter

ter-parties, or Bills of Loading, &c. And *4thly*, there are Letters of Credit, which are properly ſuch, which are written to our Friend, Factor or Correſpondent, to furniſh Monyes to a third Perſon upon Exchange, upon the Credit of the Writer of the Letter.

IV. Theſe Letters of Credit are of great Concernment, and do as much oblige the Parties that ſubſcribe them, as accepted Bills of Exchange do, in caſe he to whom they are writ, upon the Credit of the Subſcribers, ſhall comply therewith; and the Honour and Credit of the Subſcribers is as much concerned therein, as in Bills of Exchange.

V. It will not be neceſſary to caution Merchants to be careful and circumſpect, in furniſhing any with Letters of Credit, and to adviſe them to give none but upon good Security.

VI. Letters of Credit are of two ſorts; the one is General, the other Special.

VII. The General Letter is, when an open Letter is given to any, directed to all Merchants and others, to furniſh Monyes unto ſuch and ſuch Perſon or Perſons, upon that Letter of Credit, whereby the Subſcri-

ber doth oblige himſelf, that what Moneys ſhall be by them delivered unto the ſaid Party or Parties, therein mentioned within ſuch and ſuch a limitted Time, at ſuch and ſuch a Courſe (or at the Courſe currant) to be acceptable and anſwerable for the ſame, to be repaid according to the Bill or Bills of Exchange, which upon Receipt of the Moneys ſo furniſhed, upon ſuch a general Letter of Credit, ſhall be delivered for the ſame.

VIII. If any Moneys be furniſhed upon ſuch a general Letter of Credit and Bills of Exchange, directed to the Subſcriber, be preſented, the Subſcriber is by virtue thereof obliged to accept, and in caſe he refuſe, he may be compelled thereto, and to pay at the day, by attaching of his Goods, and arreſting of his Perſon, and that more then the Drawer, in regard the Remitter, in giving his Moneys to the Drawer, had not ſuch reſpect to the ability and ſufficiency of the Drawer, as to the Credit and Repute of the Subſcriber of the Letter of Credit, who is in this reſpect, reputed as the Drawer himſelf.

IX. Wherefore its very dangerous to give ſuch Letters of Credit, that are general and unlimitted to any but thoſe that are of our intimate and real Acquaintance; and

alſo

alſo its very dangerous for any to give Moneys upon ſuch a Letter of Credit, in regard the Drawer may prove Knaviſh, and take up more Moneys than the Subſcribers are able to pay, ſo that both the givers of Moneys may come to loſs, and the Subſcriber be utterly ruined in a moment, both in his Eſtate and Credit.

X. The Special Letter of Credit, is, when a Merchant gives to any other man his open Letter, directed to his Factor, Servant, or Correſpondent only, ordering him to furniſh ſuch and ſuch a Perſon or Perſons with ſuch and ſuch a limitted ſum of Moneys, at one or more times, and to charge his Account therewith, and to take Bills of Exchange or Receipts for the ſame.

XI. To prevent Frauds, and the jealouſie the Factor or Correſpondent, to whom ſuch a ſpecial and perticular Letter of Credit is directed, may have concerning the Truth and Reality of this Letter of Credit its expedient, that the Merchant that gives it ſubſcribe it with his own Hand, and affix his uſual Seal; and not this only, but alſo, that he adviſe thereof by Poſt once or twice, and inſert in the ſame ſomething or other, that may be as a particular token of the certainty thereof, at leaſt the Date of the laſt Letter

he writ, and of the laſt Letter he received, with ſome of the Contents thereof.

XII. General Letters of Credit being ſeldom given to any, by any Merchant, but upon deſign of better carrying on his own trade, the Monyes taken up being imployed for his own uſe, and improved for his own advantage, therefore he never takes any Security from the Merchant he ſo credits, &c. But he that gives to another a perticular Letter of Credit, for whoſe Uſe and Service the Moneys is to be imployed, he ought, if he be prudent, to have good Security for repayment of all ſuch Moneys as ſhall be received by vertue of the ſaid Letter of Credit, before he do ſubſcribe and deliver the ſame.

XIII. For the Merchant ſtands ſufficiently bound and obliged to his Correſpondent, by his Letter of Credit, and therefore its but reaſonable, that he that receives the Letter of Credit ſhould give a ſufficient Counter-ſecurity.

XIV. There is no difficulty in the form of either the General or Perticular Letter of Credit, wherefore it will be needleſs to inſert one, nor in the forms of the Bills of Exchange grounded upon this Letter of Credit, wherefore they are here omitted.

CHAP.

CHAP. XLII.

Of what is, and is not to be done; or what Party concerned in an Exchange is, and is not obliged to do, in caſe any that are concerned therein ſhould fail.

Rule I.

WHen a Remitter fails before he pay the Value, and the Bill be by him drawn in and endorſed, or ſent away and accepted, the Acceptant is notwithſtanding obliged to pay it at the time, though the Drawer hath not received his Monyes. But in regard, on this manner a knaviſh Remitter and a cunning Poſſeſſor underſtanding one anothers deſigns, may commit great Frauds, its neceſſary that the Poſſeſſor prove that he or his Correſpondent have effectually paid the Value, or that the ſame is remitted to him by the Remitter for a juſt and true Debt he had to demand of him. *NB.* Wherefore let the Drawer never part with both the Bills, till he hath received his Monyes.

II.

II. When the Acceptant of a Bill, the Value whereof was not paid to the Drawer, does at the day of payment refuse to pay, or is insolvent, then the Possessor may seek redress by the Drawer, and he is obliged to pay the Re-change, even of that Bill whereof he never received the Value (And *NB*, by *Re-change* here and else-where, is meant, the whole Bill which is advanced with the Re-change, Provisions and Charges, *&c.* must be paid) and not the bare Re-change only, which is the Monyes that exceeds the Value of the first Bill; and this is indeed a very hard Lesson, but yet must be submitted to.

III. Yea, if in such a case the Drawer hath drawn for his own account, and to prevent the loss by Re-change hath remitted the Value to his Correspondent, to discharge his Bill, or hath ordered his Acceptant to revalue upon him, whose Re-draughts he hath accepted; and the Acceptant yet for all this, instead of paying his Bill, runs away with his Monyes, or is insolvent and cannot pay, so that the Bill returns with Protest; yet notwithstanding this, the Drawer is obliged to re-pay the Re-change and Charges, and so

ſo twice to ſupply the Value of that Bill whereof he received no Value at all.

IV. When a Remitter fails before he pay the Value, and the Acceptant get notice thereof before he accept, and therefore refuſeth to accept, ſo that the Bill returns with Proteſt, yet the Drawer is obliged to pay the Re-change, if the Poſſeſſor can prove that he negotiated the ſaid Bill, and paid the Value for it; but if the Bill be made directly payable to any Perſon, and the Remitter ſends him the Bill in payment of what he is endebted to the Poſſeſſor, then its a great queſtion whether the Drawer be obliged or not, if he hath received no Value, nor the Poſſeſſor any otherwiſe hath made good the Value.

V. And though a Drawer in ſuch a caſe muſt pay more than the Remitter is endebted to him for the Value (*viz.* the Re-change and Charges) yet the ſaid Remitter is Debtor for no more than the bare Value, nor can any more be demanded of him.

VI. When a Drawer for another account receives not the Value, then the loſs comes charged on the account of him for whoſe account it was drawn, unleſs the Drawer ſtood *del Credere*, ſeeing the *del Credere* hath reſpect to the Remiſes, and the whole Negotiation,

gotiation; or, unleſs the Drawer gave the Remitter ſome time for the payment of the Value, and adviſed not his Principal thereof, or unleſs the Drawer had neglected to demand the Value in due and ordinary time, or unleſs (I may add) the Remitter were a man known to be inſolvent or declining; in any of theſe reſpects, whether the Drawer had any profit or no, the loſs will fall upon his own account, becauſe he credited the Remitter.

VII. When the Drawer fails before the Value be received, then the Remitter, if he hath the Bills yet in his hands, may reſtore them either to the Creditors of the Drawer, or to the Curators of his Effects, and if either of theſe think that he is obliged to perform the Contract, and that he muſt pay the Value, and demand Acceptance and Payment of the Bills, the Remitter is obliged to attempt the ſame, but with this Proviſo, that the Creditors or Curators that urge him thereto, give ſufficient ſecurity for the Rechange and Charges, in caſe he negotiate the ſame, and it be returned with Proteſt, which they muſt do before he is obliged to pay the Value to any of them.

VIII. If a Remitter hath conditioned for any time for the payment of the Value,

or

or if he cannot pay the Value, the Bank being ſhut, and in the mean time, at the requeſt of the Drawer, he accepts of an Aſſignation for the Value, payable to a third Perſon after the expiration of the Term agreed on, or after the opening of the Bank, (whether this Acceptance be verbal only, or written) the Remitter is obliged thereby to pay the Value to the third Perſon at the due time, although the Drawer ſhould fail before that time be expired, &c.

IX. If the Remitter or Poſſeſſor of a Bill have been negligent in demanding Acceptance, and the Drawer in the mean time fails, but the Acceptant not knowing thereof before acceptance is demanded, if he do accept, that Acceptance obligeth to the payment, though procured after the failure of the Drawer, as well in reſpect of the Acceptant himſelf, or any other for whoſe account the Bill was drawn.

X. If the Remitter or Poſſeſſor have neglected to demand Acceptance before the Drawer failed, then the Acceptant cannot be compelled to accept of the Draught, though the Acceptant hath writ to the Drawer, that he would accept ſuch a Bill, and though he confeſs, he ſhould have accepted it if the acceptance had been timouſly demanded

manded, and before he had knowledge of the Drawers failure.

XI. When any have Bills ſent them to demand acceptance thereof, and to keep the ſame by him, or to return them to the Remitter, or any other that he ſhall order, if they by negligence or forgetfulneſs delay to demand acceptance, or ſuffer the Acceptant to delay and defer the acceptance, and the Drawer in the interim ſhould chance to fail, and then the Acceptant ſhould abſolutely refuſe acceptance, ſuch a one deſerves ſmall thanks from the true Owner of the Bill; but he is not obliged to make good the Value. But on the contrary, if Bills be effectually remitted to any, and they be urged to procure acceptance and payment, &c. if they defer and delay to procure the ſame, if the Acceptant (being yet ignorant of the fear'd evil circumſtances of the Drawer) declare he ſhould have accepted, if it had been timouſly demanded, they are obliged to their Correſpondent who remitted the Bill, to make good the loſs occaſioned by their negligence, but further not.

XII. When a Bill is drawn in and endorſed by ſeveral Perſons before the ſame be accepted, and afterwards acceptance being demanded, is refuſed, becauſe the Drawer

is

is fail'd, then the loſs falls upon the firſt Endorſer, whoſe duty it was to have procured Acceptance, wherein being negligent, he can only blame himſelf for having no better ſecurity, and muſt hope then on his fail'd Drawers recovery.

XIII. When an Acceptant hears of the failure of the Drawer before acceptance be demanded, he ought not to accept any Bills of his, though he had advice from the Drawer, that he would draw; and while he was yet ſuppoſed to be in *bonis*, and returned anſwer, that he would accept, in ſuch a caſe he muſt upon no account to pleaſure the Poſſeſſor, or any other, accept thereof, without ſufficient ſecurity to be diſcharged from all and every one that ſhall make any pretence or demand thereof, whether the Drawer, his Creditors or Curators, or his Principal for whoſe account it was drawn.

XIV. Nor may the Acceptant accept any Bills from the failed Drawer, though the date of the Bill be before his failure, and the Letter of advice of the ſame date with the Bill, whether it come with the ordinary Poſt or not, becauſe there is great ſuſpicion (and its but too apparent in this caſe) that there is ſome Fraudulent under-hand-dealing, and

that the Bill and the Letter are truly antidated.

XV. If any be drawn on for the account of a third, and he before the acceptance hath advice of the failure of the Drawer, he ought not to accept the ſame, though he promiſed to the Drawer that he would, becauſe ſuch his acceptance may tend to his own Prejudice, if he hath not effects in his Hands for the Perſon for whoſe account will ſcruple, and juſtly, the making good of the Value; and it will be at leaſt to the Principals damage and Prejudice, if he hath the effects in his Hands to anſwer to thoſe Bills.

XVI. Eſpecially he ought not to accept any Bills, if the Perſon for whoſe account the Bill was drawn by the failed Drawer, hath adviſed him of the failure (or ſuſpicion of the ſaid Drawers failure) and therefore hath forbidden him to accept any of the ſaid Drawers Bills for his account, though he had ordered the Acceptance thereof before.

XVII. When the Drawer fails, the Acceptant is not obliged to make preſent Payment, or to give him better Security; but the Poſſeſſor muſt wait till the day of Payment before he can demand any thing of the

the Acceptant, and then the Acceptant muſt pay, though he accepted for the Drawers account, and he hath no effects of the Drawers in his Hands.

XVIII. The Poſſeſſor of a Bill, the Drawer whereof is fail'd, and payment being denyed by the Acceptant, is not obliged to return the Bill and Proteſt to the place whence it was drawn, becauſe its too apparent that the Rechange and Charges cannot be recovered from the Drawer, but he muſt inſtantly without delay, after the Proteſt is made, proceed againſt him, by attaching of his Goods and arreſting of his Perſon, which no Magiſtrate ſhould refuſe to grant; and its to be noted, that its one thing when the Drawer is yet in *bonis*, and another when he is fail'd.

XIX. When an Acceptant fails, and abſents himſelf, then the Poſſeſſor is obliged, ſo ſoon as he gets notice thereof, though before the day of Payment, inſtantly without delay to inquire the truth thereof, and if true, by a Notary publick order a Proteſt in due form to be made, and ſend the ſame with the Bill to the Remitter, to procure ſatisfaction from the Drawer, and advice ought to be given directly to the firſt Remitter, and not to the laſt Endorſer only, that the

Drawer may, if he pleaſe, order another to honour his Bills, and prevent the loſs by the Rechange, &c.

XX. But yet though the Poſſeſſor, either out of Negligence or Ignorance of this Cuſtom, or Ignorance of the failure of the Acceptant, or becauſe the Bill made payable to order, comes not till after its fallen due, or for any other cauſe does not, or cannot, make this Notarial Proteſt, nor ſend it away, neither before nor after its due, till probably on the laſt Reſpit day; yet this Negligence or Ignorance, notwithſtanding the Poſſeſſor doth not loſe his Redreſs on the Drawer and Endorſer, though the Acceptant fail'd before the Bill became due.

XXI. When an Acceptant fails before the day of Payment, and the Poſſeſſor doth order preſently a Proteſt to be made, then if the Bill be made payable to order, he doth wiſely if he ſend only the Proteſt away to the firſt Remitter, and keeps the Bill till the ſame fall due, that in caſe the Drawer order any other to honour his Bills in time, the Poſſeſſor may be ready to receive the Value.

XXII. If any other offer to accept and honour the Bill, whoſe firſt Acceptant fail'd, in honour of the Drawer, or any other Endorſer,

dorſer, in ſuch caſe the Poſſeſſor is not obliged to accept of ſuch an offer, if he look not on the offerer as very ſufficient and ſubſtantial; but if he be ſufficient, or will give ſufficient caution, then the Poſſeſſor muſt accept of his offer, and cannot refuſe it.

XXIII. But none can or may accept ſuch a Bill (whoſe Acceptant is fail'd) ſafely, without a Proteſt for Non-payment, declaring the Evil circumſtances of the Acceptant; and ſuch an Acceptant in honour muſt preſently ſend the ſaid Proteſt, together with the Notaries Atteſtation of his acceptance in honor to the Drawer, or to him for whoſe account he accepted.

XXIV. Though it be certainly known, and the Drawer himſelf muſt confeſs, that the Acceptant of his Bill is failed, yet he is not obliged to give any caution, ſecurity or ſatisfaction to the Remitter till the Proteſt be produced; but if the Remitter or Poſſeſſor have the Bills returned without the Proteſt, or the Proteſt without the Bills, or both the Proteſt and the Bills, and ſhows them to the Drawer, then he is obliged inſtantly to give ſatisfaction or ſecurity for the Re-change and Charges.

XXV. Yet let no wiſe Drawer make re-

ſtitution of the value he received, or of the Rechange and Charges upon the producing of the Proteſt for the inſolvency of the Acceptant; but upon the producing thereof, being required thereto, let him give ſecurity for the payment thereof at the place where it is payable, if there be yet time enough, or of the Re-change, when the Bill by his failed Acceptant, accepted, is produced, which Bill, if it be not produced, he need not reſtore or repay any thing, but upon ſufficient ſecurity to deliver the Bill, and to diſcharge him from all future demands, and to make Reſtitution thereof with Intereſt, in caſe the ſaid Bill be paid to any *ſupra* Proteſt; but if there be not time enough to order the payment of the Bill at the place where it was payable, then let the Drawer give ſecurity to pay it to the Remitter in the place where it was drawn, when the time of the Bill ſhall be expired.

XXVI. A Drawer or Endorſer is obliged to the Poſſeſſor of a Bill proteſted for the failing and inſolvency of the Acceptant, as much as if the Bill was proteſted for Non-acceptance (whereof ſee *Ch.* 13.) & further not.

XXVII. When the Drawer, at the requeſt of the Remitter, hath made his Bill payable to order, and that Bill is afterwards endorſed

endorſed and drawn in from ſeveral places, and ſhould, in caſe of the failure of the Acceptant, be returned the ſame way they came, then the Drawer may tell the Remitter to whom he may addreſs himſelf for payment at the day, giving ſufficient ſecurity for the payment thereof, which if he do, he is not further obliged to any, nor for more than the Charges of Proteſt and Poſtidge, and the Remitter muſt accept hereof, and accordingly order his Correſpondent to make his addreſs to ſuch a Perſon; but the Drawer muſt order his Friend not to pay any Monyes but upon the receipt of, or ſecurity for the delivery of the poteſted Bill, with the Proteſt.

XXVIII. When any is drawn on and remitted to, in Bills payable to himſelf, and he hath adviſed that he accepts of the Draught, if this Acceptant and Poſſeſſor of the Bill ſhould chance to fail before the Bill fall due, then the loſs falls upon the Drawer, or on him for whoſe account the Bill was drawn, and he is obliged to make good the Re-change and Charges, though it be not proteſted in due form and courſe; but if he fail on the day of payment, or after, then the Bill is looked upon as paid, and the loſs falls upon him for whoſe account was re-

mitted, though it ſhould formally be proteſted within the dayes of Reſpit.

XXIX. When a Sum is drawn for the account of a third, and the Bill is for his account accepted, if he for whoſe account is drawn ſhould fail, without making Proviſion to diſcharge the accepted Bill, yet the Acceptant muſt pay it, and hath no redreſs on the Drawer.

XXX. If a Bill be drawn by the order and for account of a third, and is accepted by the Acceptant, if the Acceptant fail, the Drawer muſt make good the Re-change and Charges, but yet he hath his redreſs on him for whoſe account he drew, and may charge his account therewith, though the ſaid Perſon hath already made ſufficient proviſion good to the Acceptant, or hath accepted his Acceptants Bills for the Value, and if both the Acceptant, and the Perſon for whoſe account was drawn, ſhould fail, the Bill being accepted, the Drawer may then come upon them both for ſatisfaction.

XXXI. When a Bill drawn and accepted for the account of a third, and the Acceptant fails before he, for whoſe account the Bill was drawn, hath made the Acceptant ſufficient Proviſion

Proviſion for the diſcharge thereof, if the Drawer ſhould alſo fail, then he for whoſe account was drawn need not ſuffer himſelf to be perſwaded to pay the Bill, and receive it, becauſe it was drawn for his account, unleſs the Poſſeſſor will give him ſufficient ſecurity to ſave him harmleſs, both from the Drawer and Acceptant, and their Creditors, Aſſigns and Curators, &c.

XXXII. When the Acceptant of a Bill fails before Proviſion is made to diſcharge the ſame, and the Drawer fails alſo, then he for whoſe account was drawn and accepted, need not diſcharge the Bill and pay the value, either to the Acceptant, his Creditors or Curators, unleſs it appear to him that the Poſſeſſor is ſatisfied by the Acceptant, or ſome others for his account, and doth relinquiſh all pretences to both the Acceptants and Drawers effects, or unleſs he be ſufficiently ſecured from all damage that may accrue upon the account of the ſaid draught and acceptance.

XXXIII. When the Poſſeſſor of a Bill, payable to his order, fails, and to defraud his Creditors, endorſeth the Bill to another, who negotiates the ſame, and effectually receives the Value, and doth again endorſe it to a third, &c. yet though the Creditors ſhould

ſhould oppoſe it and diſcover the Fraud, the Acceptant muſt pay it to him who comes to receive it, if he can prove that he paid the Value thereof really; but if the failed Poſſeſſor had made it payable to any other directly, he may probably be allowed Proviſion, but he muſt prove how and when he paid the Value, and muſt Swear, that before the failure of the Endorſer was known, the ſame Bill, without any Colour or Fraud, was delivered to him before he may receive the Principal; (if the Creditors oppoſe him) and if he refuſe to do this, he muſt not receive a Farthing of the Sum, or if he hath received it, he muſt be obliged to reſtore it for the uſe of the Creditors in common, and muſt alſo be obliged to draw in and endorſe the Bill that he received from the failed Poſſeſſor to defraud them.

XXXIV. When a Bill payable in currant Monyes, is made or endorſed payable to any Poſſeſſor, that is unknown to the Acceptant failed, before the day of Payment, if he afterwards pay the ſame to him, his failing being unknown, ſuch Payment is good and vaild; but if he pay to any other, upon order of the Poſſeſſor, and know of the failing of the ſaid Poſſeſſor, he does very unwiſely, and runs the hazard of paying it twice.

XXXV.

XXXV. When the Poſſeſſor of a Bill fails, and the Acceptant can prove and demonſtrate that the Bill was remitted for the Poſſeſſors account, or upon account of what the Remitter or any other for whoſe account it was remitted, was indebted to the Poſſeſſor, and therefore he only is the true Owner and Principal of the Bill, then the Acceptant may pay it to him, and he muſt credit the Perſon for whoſe account it is for the value. But if the Bill be for the account of a third, or for the Drawers account, and neither of them have received any valuable conſideration from the Poſſeſſor for it; in ſuch a caſe it ought to be paid to him, in regard the failed Poſſeſſor is not the true Owner of the Bill, but only the demander of Satisfaction; and the Acceptant ſhould be obliged at the day of Payment to pay the ſame to the next order of the Remitter, or the true Owner of the Bill for whoſe account it is.

XXXVI. If a ſuſpected Poſſeſſor of a Bill ſhould Fraudulently twice draw in effectually the ſame Bill, and give the *prima* Bill to one man, with directions to find the *ſecunda* Bill accepted, and the *ſecunda* Bill to another, with directions where to find the *prima* accepted, then he only hath right and title to the Monyes that firſt procures acceptance (he not finding

finding any accepted Bill, as he was directed) whether it be the firſt or ſecond Bill that is accepted, it makes no matter, or whether it were firſt or laſt negotiated by the fraudulent Endorſer.

XXXVII. When the Poſſeſſor of a Bill that is fail'd, to defraud his Creditors or others, conceals it, and they afterward diſcover that ſuch a Remiſe muſt yet be in his Hands, or ſuch a draught is, or at leaſt was in his Hands, then the Acceptant is obliged to declare whether he hath accepted ſuch a draught, to which if he anſwer affirmatively, the Creditors, or any other concerned, may forbid the Acceptant to pay it, without their or his knowledge and conſent; and if any appear at the day of payment to demand payment, he is obliged to declare, that he is the true poſſeſſor of the ſaid Bill, and prove it; if none appear, then the Acceptant is obliged to pay the Sum to the Creditors or Curators of the failed Poſſeſſor, they giving ſecurity that the Acceptant ſhall in no wiſe be prejudiced thereby, or if he ſcruple to do it upon their Security, he may pay it into the Hands of the Magiſtrate, for the account of the true Owners thereof; and if the Acceptant refuſe this, the Creditors or Curators may unanimouſly proteſt againſt him for non-payment, and ſend the ſame to the Remitter

to

to procure ſatisfaction of the Drawer, and if he make no Satisfaction, then they may compel the Acceptant thereto.

XXXVIII. When a Bill is made payable to the order of any that is failed, before the Bill be come to his hands, if he receive the Bill and endorſe it, making it payable to any other that demands acceptance thereof, and the Acceptant accepts thereof, being ignorant of the failing of the firſt Poſſeſſor, in ſuch a caſe the Acceptant may, getting knowledge of the failing of the firſt Poſſeſſor, and that he was failed before he endorſed the ſaid Bill, not pay the Value to his order, becauſe the failed Poſſeſſor, after his failing, had no power or quality to endorſe a Bill of Exchange, and therefore the Acceptant doth wiſely to offer to make Payment thereof to his Creditors or Curators, upon ſufficient Security to be indemnified, which if they accept not of, let him ſuffer the ſaid Bill to return with Proteſt.

XXXIX. Its not without ſuſpicion of Fraud when the Debtor of an inſolvent pretends to have a Reſconter, becauſe that he at the requeſt of the failed, when he was yet in *Bonis*, accepted a Bill, or under-writ a *tertia* Bill, payable to ſome of the failed's Creditors, and that he paid the ſaid Bill he accepted,

accepted, or that the Bill, the *tertia* whereof he ſubſcribed, was proteſted, and he forced to pay the Rechange and Charges; for the Debtor and Creditor, or Poſſeſſor of ſuch a Bill, underſtanding one another, and the condition of the failed may eaſily, to the prejudice of the Creditors, make abundance of ſuch Bills after he failed.

XL. When a Poſſeſſor of a Bill hath neglected to procure acceptance in time, and the Acceptant after the failure of the Drawer refuſeth to accept, then he hath no Priviledge or Preferrence more than other Creditors, to the effects he may have in the Acceptants hands, though the Drawer drew meerly upon thoſe Goods, and would have been accepted, if demanded before the failure of the Drawer was known.

XLI. Though the Poſſeſſor of a Bill, whoſe Acceptant failed before the day of Payment, or within the Reſpit dayes, hath an open account with him, and is Debtor to him for a greater Sum than the value of the Bill imports; and though he may now upon the failing of the Acceptant reſconter, yet he doth more wiſely if he proteſt for Nonpayment, and let the Bill return.

XLII. When the Drawer, or he for whoſe

whoſe account is drawn, fails before they have made good the promiſed Proviſion to the Acceptant, then the Acceptant paying at the time, or if not accepted, or not paid, but returned with Proteſt, the Drawer hath priviledge and preferrence before all other Creditors, upon any of the effects of the failed that they have in their own Hands.

XLIII. When an Acceptant of a Bill hath Remiſes made to him for Proviſion, by him for whoſe account he accepted, to diſcharge the ſaid Draughts with, if he having received the Remiſes, faileth before he diſcharge the draughts, then muſt the Principal anſwer the Rechange and Charges, and muſt be content to come into a *concurſus creditorum* with the reſt. But if upon the failing of the Acceptant, the Remiſes be yet found by him, and not yet received, then the Principal that made thoſe Remiſes muſt be preferred to them, and they muſt be paid to his order; and though the Creditors or Curators have received the ſame after the Inſolvency of the failed, yet they muſt repay the ſame again.

XLIV. The Poſſeſſor of a Bill, proteſted for Non-acceptance or Non-payment, whoſe Drawer and Acceptant are both failed, muſt concur with the reſt of the Creditors, not for the Value only that was paid, but

but for the Rechange and Charges, and for the Sum that the Drawer or Acceptant ſhould have paid, if they had been Solvent.

XLV. If both the Drawer and the Acceptant fail, then the Poſſeſſor hath right and titie to demand payment of both their Goods and Debts, &c. and he may chuſe with which he will firſt begin, and where he can ſooneſt procure Payment or Satisfaction, and if ones Effects will not ſatisfie his Demands, he may then get as much as he can of the other's, for they are both obliged.

XLVI. And the ſame right that he hath to the Goods and Debts, or whatever elſe, either the failed Drawer or Acceptant may have, till he be ſatisfied, he hath alſo the like againſt any, or all the Endorſers, if the Bill be returned unaccepted, if they come to fail, and if the Bill be accepted, if the Acceptant, Drawer and Endorſers ſhould all fail, and be Inſolvent, then he may come upon all their Goods for ſatisfaction.

XLVII. The Poſſeſſor may demand the full Sum, with all the Charges out of the Goods and Effects of that failed Acceptant, Drawer or Endorſer, where he firſt gives himſelf on as Creditor, and what he receives there, he may place to account in part of his Demands,

Demands, and if not ſatisfied there, he cannot demand the whole again of another, but only the remainder, and ſo from one to another till he be ſatisfied fully.

XLVIII. If the Poſſeſſor of a Bill, whoſe Acceptant, Drawer and Endorſers are all failed, receives ſomething in part of ſatisfaction of his demands, if the failed or the Curators do thereupon demand an Acquittance with a Ceſſion of the Action to him or them, then the Poſſeſſor muſt not acquit, nor transfer more of his Action to him or them, than for the value he hath received.

XLIX. When the Poſſeſſor hath received of one of the failed, in part ſatisfaction of his Demands, and comes to another of the failed to demand the reſt; then he cannot make a Ceſſion of his Action againſt him, from whom he had received in part ſatisfaction at firſt, becauſe he was there admitted into the Concourſe for his whole demand, and accordingly received his proportion. So that *NB.* though a Poſſeſſor enter into a concourſe with other Creditors, and take in part of his Debt of one of the failed as much as he can get, and thereupon doth abſolutely diſcharge him; yet for the remainder he may come upon the other Endorſers or Drawers, till his Bill be fully ſatisfied, only

he cannot transfer or transport his Action againſt him whom he hath diſcharged.

L. When a Poſſeſſor of a Bill, whoſe Drawer, Acceptant and Endorſers are all failed, does firſt receive, in part of his demands, of one of the failed, for whoſe account the Bill was drawn, but hath either drawn, or endorſed, or accepted the Bill for anothers account, without having any effects in his hands, then the Poſſeſſor muſt enter with him, who paid him in part, into a concourſe between themſelves, and both demand of the others (or any one of them) that failed, the *ſubla ſumme*, with the Charges.

LI. In caſe of the failing of Drawers, Acceptors or Endorſers of Bill, many difficult Queſtions could ariſe, whereof ſome of them are as follow.

1. Suppoſe either the Drawer or Acceptant ſhould fail, and the other remains ſufficient.

Quæritur, Whether the Poſſeſſor, to pleaſure him that is yet ſufficient, may (being not requeſted thereto) by virtue of of the Bill, enter upon a concourſe, or whether he muſt look to him only that is ſufficient, and leave the other to take care for himſelf?

2. Suppoſe

2. Suppoſe the draught is for account of a third Perſon, and the Accepant fails before Proviſion be made to diſcharge the accepted Bill, by him for whoſe account it was drawn and accepted; ſuppoſe alſo, the Bill being proteſted for Non-payment, the Drawer ſhould proſecute the Acceptant, (or any other Poſſeſſor ſhould do it) and at laſt they come to terms of agreement, and the Acceptant doth then accordingly ſatisfie the Poſſeſſor, whoever he be.

Quæritur, What right of demand theſe either of them have one upon another, or either or both of them, upon him for whoſe account the Bill was drawn?

3. Suppoſe the Poſſeſſor of a Bill hath negotiated to proteſt within the days of Reſpit, and the Acceptant ſhould fail, without having Effects in Hands for whoſe account he accepted.

Quæritur, Whether the Poſſeſſor may agree with him, for whoſe account the Bill was drawn, and ſo mortifie the Draught; or whether he, for whoſe account it was, muſt fully ſatisfie the Acceptant, and the Poſſeſſor muſt be content to engage in a courſe with the Acceptants Creditors?

4. Suppoſe a Merchant hath no other

Debts at all, but one only Bill of Exchange by him drawn for his own account, whoſe Acceptant failing, he alſo is forced to abſent.

Quæitur, Whether the Poſſeſſor may ſeize upon all the Effects of the Drawer, upon account in part, and for the remainder may be admitted as a Creditor, into a concourſe of the Acceptants Creditors?

5. Suppoſed, in caſe of the failure of Acceptant, Drawer and Endorſers, the Poſſeſſor ſhould firſt make his demands of the full Sum of him who is the true Debtor, and ought to pay, and the remainder ſhould be demanded (part being there ſatisfied) of the Endorſers, or any other concerned in the Bill, that have only drawn, endorſed or accepted for anothers account.

Quæritur, Whether in ſuch a caſe (this laſt demand being alſo ſatisfied) they that pay to the Poſſeſſor the remainder, may come upon the Perſon who ought to pay, for ſo much as they have paid to him?

6. Suppoſe that any Merchant ſhould fail, that hath three Creditors only, one demands 600 *l. Ster.* for Goods ſold, another as much for a Bill of Exchange, drawn by him for his account, whoſe Acceptant failed, and a third as much, upon an Obligation, Bond or Bill, for ſo much Monyes depoſited, having no other

other Security but his bare Bond. But though there be ſo much Debt, yet the failed Debtor hath no more Effects then 600 *l. Ster.* in all.

Quæritur, 1. Whether this Sum of 600 *l.* muſt equally be divided among theſe three Creditors or not?

7. Suppoſe again this being done, the Poſſeſſor of the Bill ſhould come upon the Acceptant for the remaining 400 *l. Sterling*, and ſhould there be forced to enter with other Creditors upon a Concourſe.

Quæritur, 2. Whether then the ſaid Acceptant may not pretend, that he paying ſo much on the foreſaid failed's account, and ſo becoming his Creditor, that another diviſion of the foreſaid 600 *l.* ought to be made, and he to have part thereof, the ſame may be enquired after, in caſe the Poſſeſſor of the Bond, &c. had any Security, and he forced then to pay the remainder, whether he ought not to admit them as Creditors to the 600 *l. Sterling*?

8. Suppoſe that Drawer, Acceptant and Endorſer are all fail'd, and have given their Goods and Effects into the Magiſtrates, or any Curators Hands, and the Poſſeſſor ſhould in one place give himſelf on for the full Sum, and receives there ſomething in part, and ſo

alſo in another place receives ſomething more; and after ſome time be expired, more of their Debts being come in, the Magiſtrates or Curators ſhould make a ſecond Diviſion.

Quæritur, Whether the Poſſeſſor of the Bill, at this ſecond Diviſion, muſt come in for a proportion, according to his reſpective Sums he formerly received, or for what Sum he muſt be admitted?

9. Suppoſe that Bills of Exchange are running betwixt two, or more, that are failed, for one anothers account reciprocally, and neither of them have open accounts for one another, neither accounts currant, nor upon time, and yet both have Goods unſold in their hands.

Quæritur, How then the Compoſition muſt be made, and whether what the one hath to debit the other for muſt be adjuſted?

10. If the Poſſeſſor of a Bill fail before or after the Bill is due, and the Acceptant hath yet in hands, or ſees and knows where to get another accepted Bill, payable by the Poſſeſſor, or a proteſted Bill for Non-acceptance, drawn by the Poſſeſſor, which will fall due before or ſoon after the Bill the failed Poſſeſſor had payable by the Acceptant, &c. *Quæritur*,

Quæritur, Whether in any, or all, or none of theſe Caſes, and in which Reſconter or Diſcount hath place?

LII. Merchants that fail, not on deſign to defraud their Creditors, or to enrich themſelves by their loſſes, neither occaſion their own failing by their negligence, or Riotous living, but have loſt their Eſtates by croſs Providential Diſpenſations immediately, as by Fire, Water, Shipwracks, Wars, Pyracies, &c. or mediately by the Knaveries of Wicked Correſpondents and Factors, &c. are greatly to be pitied. and not to be perſecuted with the Rigor of the Law. But thoſe that are Knaviſh, or have ſpent their own and others Eſtates in profligate and debauched living, deſerve to ſuffer the utmoſt Extremity of the Law, as Thieves and Robbers. *Scaccia.*

LIII. Honeſt Merchants that fail, will judge themſelves in Conſcience obliged to make their Creditors ſatisfaction, *Quando ad pinguiorem fortunam pervenerint*, and will uſe all endeavours to do it, though they have compounded with their Creditors, and the Creditors have for part received, wholly diſcharged them, and this is the Teſtimony of their honeſty, when they will pay, though the Laws of the Land cannot compel them. *Scaccia.*

LIV. *Decoctus* ſays, The Law *Eſt quaſi Mortuus*, which may be applied to many caſes, in reſpect of Exchange, and what a Poſſeſſor or Remitter are obliged to do, if the Acceptant or Drawer fail, the ſame they are obliged to do if they dye, if they procure not Payment. *Scaccia.*

LV. If the Poſſeſſor of a Bill dye, and there are none that can lawfully receive Monyes, nor give a ſatisfactory Diſcharge, and yet ſome ſhould appear as Heirs, or Aſſigns, or Excecutors to enter a Proteſt of Non-payment, then the Acceptant muſt adviſe the Drawer of all the Circumſtances, and he muſt conſult with the Remitter, and give further orders, or he may depoſit the Sum in the hands of the Magiſtrates, to be reſerved by them for the true Owner. *Scaccia.*

LVI. If the Poſſeſſor of a Bill proteſted, ſhould agree and compound with the Acceptant, and the Drawer be the Acceptants Debtor for the Sum he accepted, though the Drawer be thereby diſcharged from the Remitter and Poſſeſſor, and that Acceptant alſo, yet the Acceptant can debit the Drawer for no more of that Bill or Bills than he effectually paid, according to the Compoſition. *Scaccia.*

LVII.

LVII. But if the Poſſeſſor hath made this Compoſition with the Acceptant, without the Remitters order and conſent, the Remiſe being for the Remitters account, then the Poſſeſſor will be liable to anſwer the whole Sum to him. *Scaccia.*

LVIII. If the Drawers or Endorſers being failed, deny that the Bills they have drawn and endorſed, and the Acceptant hath accepted, were for effects of theirs, that the Acceptant had in his hands, or that they have ſince or before acceptance made him proviſion for the diſcharge thereof, they muſt at their Creditors requeſt prove the ſame. *Scaccia.*

CHAP. XLIII.

IN this Chapter ſhall be added ſome ſelect Caſes collected out *Sigiſm. Scaccia.* his Treatiſe *De Camvio & Commercijs.*

Glaſſema Primum.

Caſe 1. VV*Hether it be neceſſary that Bills of Exchange be made?*

Anſw. Affirmatively; but not becauſe they are *de Eſſentiâ Contractus*, but only in reſpect of better Proof of the Contract, and that Execution may more eaſily be obtained upon them; Therefore, *Regularitur*, they are neceſsary.

Caſe 2. *Whether ought the Remitter to give the Monyes to the Drawer, or the Drawer give the Bills to the Remitter firſt*, de jure?

Anſw. The Remitter, who is as the Buyer, muſt give his Monyes firſt; for Good bought for ready Monyes, need not be delivered till the Monyes be paid. 2*dly*, The Bill ſayes expreſly [*The value received*] and there is danger to the Drawer to give his Bills away before the value be received. But, 3*dly*, Rather than there ſhould among Merchants be any diſpute about this, let the Drawer give the *prima* Bill to the Remitter firſt, and keep the *ſeeunda* Bill till he receive his Monyes.

Caſe 3. *Whether it be neceſſary to begin a Bill of Exchange (or any other publick or private*

vate Inſtrument) *with* Laus Deo, *or* Signum Crucis, *as the* Papiſts *uſually do?*

Anſw. No; for it is but a ſuperſtition, which the Law takes no notice of, neither is it of the Eſſence or Subſtance of a Bill of Exchange, or other Inſtrument; and though it be uſed by many, and the *Italians*, as the Author, and others that he quotes, aſſert the neceſſity thereof, as grounded upon Cuſtom, and as a Note of Diſtinction betwixt *Chriſtians* and *Heathens*, yet its certain, as the Author confeſſeth, no ſtreſs was ever laid upon it; and I am bold to add, *That it is Superſtitious, and more a Prophaning than an Invoking of the Name of God.*

Caſe 4. *Whether is the Date of a Bill of abſolute neceſſity, ſo that without it the Bill is void and of no effect, and here firſt, whether the Year muſt be ſpecified?*

Anſw. 1. Its not ſo abſolutely neceſsary *de jure*, but its yet *de conſuetudine* (that hath obtained the force of Law) abſolutely neceſsary; ſo that the Omiſſion thereof doth vitiate a Bill of Exchange; beſides, in Bills of Exchange time is *de Subſtantia Contractus.*

And 2dly, *Whether the day of the Moneth muſt be expreſt?*

The Anſwer is ſtill the ſame; for how ſhould Uſance be reckoned, if this be omitted, if Uſance be after Date, *&c?* And if the

the Bills ſhall prove for the Drawer, in his favour the true date muſt be added, otherwiſe though the Poſſeſſor ſhould not proteſt his Bill in time, and the Remitter come and deſire reſtitution upon that Proteſt, if the Acceptant was the Drawers Debtor, and failed, or in any ſuch like caſe, the Drawer may thank himſelf, if the Date were omitted, it will prove againſt him, not for him, nor can he on this account refuſe to make Reſtitution. Nor can the Acceptant upon this account, by the ſame reaſon, refuſe acceptance and payment, but ſuch Bills may as effectually be proteſted as if they were dated. Nor can the Notary Publick upon this pretext refuſe to make a Proteſt, and the reaſon is this, The date of the Bill is not *de jure*, ſo Eſſential, that the Omiſſion thereof ſhould make it utterly void; for the Body of the Bill will prove the Contract againſt the Drawer, and againſt all elſe concerned in it, in favour of the Remitter and Creditor.

And yet, if the Acceptant refuſe to accept an undated Bill, he doth well, and cannot be prejudiced, yet may ſafely accept it, if he pleaſe, without any fear of Prejudice to him; for all the fault is the Drawers: And if the Poſſeſſor refuſe to proteſt ſuch Bills, the fault is his, and he may make himſelf therby lyable to make ſatisfaction to the Remitter, if any Damage ſhould enſue.

Caſe 5.

Caſe 5. *Whether the Place muſt neceſſarily be added in the Date of a Bill of Exchange?*

Anſw. In the Affirmative, *de Conſuetudine, non de jure*, Its not enough to know that ſuch a Bill was done in the *World*, or in *England*, *Scotland*, *France* or *Ireland*, but at leaſt the Name of the City where ſuch a Bill was made muſt be expreſt; and as he is unwiſe that will accept a Bill of Exchange any way deficient in theſe Circumſtances of Time or Place, ſo alſo is that Poſſeſſor unwiſe, that becauſe the Bill is deficient, will not proteſt upon refuſal of Acceptance.

To this let be added, That if the Acceptant doth accept a Bill, and doth not then obſerve it to be deficient in any of theſe Circumſtances, and afterwards will make ſuch Exceptions to avoid the payment thereof, he cannot thereby be excuſed, but muſt pay.

Caſe 6. *Suppoſe that this day, the* $\frac{1}{11}$ *of* November, Anno 1680. *at* Konigsbrough *in* Preſſia, *I writ Letters to* Hambrough *to* Robert *my Correſpondent there, adviſing him, that I have drawn on him, of the ſame date, ſuch and ſuch Bills, &c. Suppoſe alſo, that inſtead of dating them the* $\frac{1}{11}$ *of* Novembris *aforeſaid, they be dated the* $\frac{1}{11}$ Octobris *paſt, or the* $\frac{1}{11}$ Decembris *to come. Theſe Letters and Bills*

they

they arrive at Hambrough *by the Poſt the* $\frac{11}{21}$ Novembris, *on which day the Letter of Advice is delivered, and the Bills for Acceptance preſented; The Acceptant he preſently obſerves the Error, and begins to ſcruple Acceptance; if he doth accept, he knows not how to place them to account in his Books, becauſe the Dates, which ſhould be orderly, and one Day and Moneth follow upon another in his Books, and it may be he ſuſpects there is ſome piece of Policy (or Knavery rather) in the caſe, and either the anti-dated Bills ſhould not be paid at all, (ſuppoſe they were at ſight) till the* $\frac{11}{21}$ Decembris, *or the Poſt-dated Bills (ſuppoſe the term of Payment be expired) ſhould not be accepted at all; in theſe Perplexities of Thoughts has ſtates and fears in the whole, the Deſign is to trapan him, eſpecially if he hath engaged himſelf under a Penalty to accept all the Bills of ſuch and ſuch a Perſon, for ſome limitted Time and Sums. What ſhall and muſt* Robert, *my Correſpondent, do in ſuch a caſe?*

Anſw. Robert not only may, but muſt accept and pay thoſe Bills, though no Penalty were annixed. For, *Firſt*, This pretext of an Error in the date will not excuſe me (the Drawer) from paying the Rechange and Charges, if proteſted, much leſs my Correſpondent, who muſt obſerve my order, and repreſents my Perſon, and that this pretence

tence will not excuſe me, is ſelf-evident, becauſe in reſpect of me, Time and Place are not of the Eſſence of the Bill, by an Error, or the Omiſſion whereof, the Bill it ſelf ſhould be ſo vitiated as to be null and void. *Secondly*, Suppoſe an Error in, or Omiſſion of theſe Circumſtances of Time and Place were of the Eſſence of the Bill of Exchange, yet though the Bill be deficient and vitiated, yet the Contract contained in the Bill is valid and firm. And, *Thirdly*, In ſuch a caſe where an Error is ſo evident and palpable, reſpect ſhould be had to the Letters of advice, and if they were alſo wrong dated, yet being its impoſſible that Letters dated at *Konigsbrough* the 13th *Decembris* ſhould arrive at *Hambrough* (an hundred *Dutch* Miles off and more) three Weeks before the time of the date. Thus palpable Error muſt give way to Truth, eſpecially ſeeing the Error is not in the ſolemnity of the Contract, but in the formality of the Bill; and theſe Circumſtances are only added as Proofs of the Contract, not as Parties, and of the Eſſence thereof.

Caſe 7. *Whether an Error about, or an Omiſſion of the Name of the Place be Eſſentially neceſſary to be expreſt in a Bill of Exchange?*

Anſw. To avoid Repititions, I refer my ſelf to what hath been ſaid concerning an Error

Error in, or Omiſſion of the time of the date of a Bill.

Caſe 8. *If the Sum expreſt in Figures, and the Sum writ at large in Letters diſagree?*

Anſw. Refer'd to what was before hinted, Chapter 7. Rule 26.

Glaſſema Secundum.

At Uſance.

WHat Uſance is, and what other times of payment are uſually expreſt in Bills, and all other Queſtions and Caſes concerning them, we refer to what hath already been ſaid in the 14th Chapter fore-going.

Glaſſema tertium.

Here muſt be promiſed Pay.

THat *Pay*, is here *modi imperitative & temporis preſentis*, & accordingly hath various Effects: 1*ſt*, That Bills of Exchange are poſitive and peremptory, the Order is abſolute and cannot be revoked: 2*dly*, That the

the Payment at the time appointed muſt neceſſarily be made, and if accepted, cannot be avoided: Wherefore, 3*dly*, Its not according to the Merchant Stile, to ſay in a Bill of Exchange [*Pleaſe to Pay*] the Stile of Exchanges will not allow of ſuch Complements; not from a Servant to a Maſter: 4*thly*, This word [*Pay*] commands Acceptance firſt, in order to Payment, as well as Payment it ſelf.

Concerning Acceptance, which preceeds Payment alwayes, we have ſpoken ſomething before, Chap. 10, 11, and 12. and probably ſhall have occaſion to hint ſomething elſe afterwards; wherefore we proceed to ſpeak to ſeveral Caſes concerning the Payment of Bills.

Caſe 1. *What is it to pay a Bill of Exchange?*

Anſwer; To ſatisfie the Bill, and procure a diſcharge upon it, that the Acceptant and the Drawer may be diſcharged from the Remitter and Poſſeſſor; ſo that to *Pay*, is rather to be referred to the ſubſtance of the Obligation, than to the payment of Monyes; and if the Bill be ſatisfied, its no matter at all whether with Monyes or Goods, or by Reſconter, &c. though ordinarily all Bills are paid in Monyes: and this is certain, that if the Bill be for Monyes, it muſt be paid in Monyes, if the Poſſeſſor will have it ſo; and

a Poſſeſſor may as well proteſt for Non-payment, if Goods be offered inſtead of Monyes, or any other Species of Monyes than that the Bill requires, (as to pay *per* Caſh when the Bill is payable in Bank) as if no Payment at all were offered.

Caſe 2. *How many ſorts of Payments are there? And to whom is the Debtor ſaid to have paid well, and to whom not?*

Anſwer; There are two ſorts of Payment, *Proper* and *Improper*; *Proper* is when the Bills are paid in the preciſe Species, and according to the tenor of the Bill, either in Gold or Silver, in Bank or *per* Caſh, in currant lawful Monyes, and ſuch Species as the Bill requires; and ſuch Payment as this doth abſolutely diſcharge the Debtor, becauſe the Obligation is fully ſatisfied, and the Creditor need not be much inquiſitive, who pays his Bill in this kind, whether it be the Debtor himſelf; or 2*dly*, any other by his order, and in his Name; or 3*dly*, without his order, *ſupra Proteſt*, in honour of the Bill; or 4*thly*, without either Order or Proteſt (if any be ſo fooliſh) the Creditor may from any of theſe ſafely receive his Monyes, and transfer his Action, if he pleaſe; 5*thly*, yea, if any will pay againſt Order. But on the contrary:

To a full diſcharge of the Debtor, is required not only a ſurrender and delivery, and

and a Diſcharge or Acquittance upon the Bill, but he muſt obſerve to whom he pays; and Payment in reſpect of the Debtor is only good, when it is made, 1*ſt*, To one ſufficiently authorized and qualified to receive and diſcharge as he is; 2*dly*, To whom it is orderly laſt aſſigned and endorſed; or 3*dly*, To him with whom the Contract was made (if there be no Endorſments) or 4*thly*, To him for whoſe account the Bill is; or 5*thly*, To a Servant of any of theſe, who hath ordinarily for his Maſter received Monyes, and given Receits, whereof the Maſters hath approved; or 6*thly*, To the Executors or Adminiſtrators; or 7*thly*, To any that the Remitter and the Drawer ſhall agree upon, in caſe they revoke their firſt Order, if the Bill be for the Remitters, or for any thirds accounts; for then, though it be orderly aſſigned and endorſed to another, who is only as the Remitters Factor, if the Remitter forbid the Acceptant to pay him, he muſt not pay, but upon his own hazard, but muſt pay to him whom the Remitter orders; concerning this, ſee *Chap.* 16.

To all which may be added, that if the Acceptant pay *mala fidei Poſſeſſori* ignorantly, that Payment is good, if the Bill otherwiſe in all its Formalities be perfect, *&c.*

Improper Payment hath all the Effects and Virtue of a *Proper* Payment, though it be

not made in a precise Species, nor according to the tenor of the Bill, yet it discharges the Debtor as effectually, only the Creditor cannot be compelled to take this, as he may be to take the other, and it must be made only to the true Owner of the Bill, to one that hath his order to accept of such payment, else it is not good nor sufficient, nor will the Debtor be thereby discharged, if the true Owners order hath only a simple order to receive Payment, and not positively such payment, because no order of the true Owner and Possessor of the Bill hath power to alter the tenor thereof; whereas if the true Owner resconter, (or order his Order so to do) or take payment in Goods, or otherwise in Words declare himself satisfied, or order him to satisfie any other for the Value, or to Resconter with any other; though there be in all this no actual payment of Monyes, in Specie, yet the Payment is good.

Case 3. *A Possessor hath several Bills upon one Person, and they all fall due near upon one time, part he pays, and the other part he pays not till a day or two after, (yet within the Respit dayes) in the mean time he fails, and cannot pay at all: the Question is, for whose Accounts that shall be that is paid, or whether the Receiver hath power to place it to what Accounts he pleaseth?*

Answ. 1.

Anſw. 1. If the Debtor expreſs and declare on what account he pays, if the Creditor or Receiver be ſilent, and ſo receive it, it muſt neceſſarly be for that account, yea, though there remain another Sum then due, for which the Drawer had given Security, and ſo it may ſeem to be paid in *prejudicium tertij*; yea, and though the Creditor had engaged not to act againſt the Surety, till he had firſt excuſed the principal Debtor; and as on one hand the Surety cannot juſtly complain of the principal Debtor for ſo doing, becauſe it was in his power to do with his own as he pleaſed at that time, and ſo pay for what account he would; ſo neither can it on the other hand, in favour of the Surety, or of the Creditor, be altered, though the Debtor himſelf conſent; becauſe when once paid, it is no more the Debtors, nor hath he any further diſpoſal over it, nor can it be ſaid, that the payment was made to defraud the ſecurity, becauſe the payment was Real, and upon a real account. But if the Creditor had acted at Law againſt the Debtor, and procured execution againſt him, and ſo had ſeized on his Effects, and expoſed them to ſale to pay himſelf, then the caſe is otherwiſe; for then the Debts, for which there are Sureties or Pledges given, muſt firſt be diſcharged, or elſe the Creditors do not as they would be done to.

2. If the Debtor be ſilent when the Creditor ſays, he receives for ſuch and ſuch accounts, then ſuch payments muſt be for ſuch accounts, becauſe its preſumed, that the Creditor herein acts as if he himſelf had been Debtor.

3. If one of them chuſe, and the other in that moment contradict, the Debtors choice muſt be preferred, and if the Creditor will not receive for thoſe accounts, he ſhonld not receive at all, or if received, he ought to make reſtitution, or place it to account, as the Debtor would have it.

4. If both be ſilent, as to the accounts the the Monyes is paid and received upon (or if they would defer it till another time to reſolve upon, which cannot lawfully be admitted) then the oldeſt Debt muſt firſt be ſatisfied; and if they are alike old, then *cauſa Durioris*, muſt be preferred, becauſe its moſt neceſſary, as if any Surety be engaged for the Debtor; in this caſe it would be very hard that he ſhould ſuffer. Yet,

5. If the Debt be for Intereſt and Principal, and the Debtor pay any Monyes upon that account, though the Principal be heavier, yet the Law always ſuppoſeth that the Intereſt muſt firſt be paid, becauſe men uſually gather the Fruits before they pull up the Tree. So alſo,

6. If there be a Surety for one part of the Debt

Debt, and a Pledge for the other, though (neither in this nor the former caſe) the Debtor nor the Creditor ſpeak not a word about it, or though they do ſpeak, yet the Law preſumes, that the Monyes paid is firſt to diſcharge that part for which there is ſecurity given, and not for that for which there is a Pledge, becauſe the Creditor can ſell the Pledge when he pleaſeth, and ſo pay himſelf.

Caſe 4. *Whether Preſcription be good Payment? And how ſoon a Bill of Exchange may be preſcribed?*

Anſw. Preſcription is improper Payment; yet being it hath the effect of a Real Payment ſometimes, we muſt therefore enquire, *How ſoon a Bill of Exchange may be preſcribed?* And to this is anſwered, That accepted and duely proteſted Bills, or proteſted for Non-acceptance, can never be preſcribed, if demands be conſtantly made; but if a palpable negligence or ſilence can be interpreted, for conſent, and that out of ſuch a Conſent Preſcription can ariſe, eſpecially the Creditor knowing what the Law in theſe caſes is, and having frequent opportunities to make demands, or to puruſe at Law for Non-payment; or if ſuch a conſent imply a Renunciation, Remiſſion or Satisfaction, then we cannot ſuppoſe that any long time is requi-

red to preſcribe a Bill of Exchange; and the Law preſumes, That when a Debt may conveniently be demanded, but is neither demanded nor proteſted, that then it is paid; and if it were not thus, there would be no end of Controverſies and Diſputes among Merchants; for they many times, when their Bills are paid, either negligently or in confidence of their Creditors honeſty, leave them in their Creditors Hands: And here obſerve, That as to the ready Execution that Bills of Exchange are priviledged with, when proteſted, if not preſently, *& extempore* put in execution, when they conveniently may, is in ſo far preſcribed, that they then ſignifie no more than any other ordinary Bills or Bonds, which muſt be ſued for in the ordinary Methods.

Caſe 5. *If a Creditor upon any pretence, refuſe to receive the Monyes due upon a Bill of Exchange, &c. What is then to be done?*

Anſw. Depoſit the Value in the hands of the Magiſtrates of the place, or any other ſufficient Perſons, upon the account of ſuch a Bill, and this ſhall be accounted good payment, and diſcharge both the Acceptant and the Drawer, if it be according to the tenor of the Bill.

Caſe 6. *If the value of Monyes be inhanced*

or depreſſed, between the making and diſſolving the Contract by Payment, whoſe ſhall the Profit or the Loſs be?

Anſw. The value of Monyes may be inhanced or depreſſed two wayes, Intrinſically and Extrinſically; As to the Extrinſick value of Monyes, the loſs, without Controverſie, is the Creditors, and the Profit alſo is, as is aſſerted in the ſixteenth Chapter, fourteenth Propoſition.

But as to the Intrinſick value of Monyes, if in this interval of time it be inhanced or depreſſed; if it be of a worſe or a better allay, of greater or leſſer Prize, then the Debter muſt pay according to the value of the Monyes, at the time of making the Contract; and if any of the old Species of the old value be to be had, he ſhould pay in that Species, whether it be to his profit or to his loſs, and the reaſon is clear, If I borrow any Commodity, to pay again in Specie, both the Extrinſick and Intrinſick Value thereof muſt be conſidered.

As for Inſtance:

I borrow of my Neighbour ten Quarters of Wheat, the Quarter being then valued at 40 *s.* Now when I would pay my Neighbour his Wheat again, if what I will pay with be not ſo good, as that which I received, which is the Intrinſick value, there is no reaſon, but I ſhould proportionably give him

him again more than the ten Quarters, and if my Wheat be better, there is no reaſon but that proportionably ſo much leſs ſhould be reſtored, I allowing him the uſual lawful Intereſt of his Monyes for the time; ſo alſo, as to the Extrinſick value, ſuppoſed that the Wheat I will pay with, be as good every way, as that I received, but what then was bought for 40 *s.* *per* Quarter, may now be worth 50 *s.* or it may be is fallen and worth no more than 30 *s.* if the Debtor then pay the quantity, he is diſcharged, no reſpect being had to the Extrinſick value, the Profit & loſs thereof being the Creditors, as before was ſaid; only let me here add, that we only ſpeak of Bills of Exchange here, which ſuppoſe Punctual Payment; whereas if a Debtor ſhould from time to time put off and delay Payment, after its due, there is no reaſon but if there be Loſs he ſhould bear it, and if there be Profit, that the Creditor ſhould have it, becauſe he himſelf the Debtor is in fault.

Caſe 7. *If a Creditor of a Bill of Exchange do receive of his Debtor, or of the Debtors Debtor, or of any other, at the Debtors inſtance, other Bills of Exchange, payable at the ſame time by other Perſons; if theſe Perſons pay not, Whether is the Debtor diſcharged or no? Or ſuppoſe for Inſtance; I owe you* 100 l. Sterling

upon

upon Bills of Exchange, and Titius *owed me an* 100 l. Sterling *upon Exchange alſo; Wherefore I deſire* Titius *to make and give you Bills of Exchange, payable at* Amſterdam, *for the Value which you accept of, and diſcharge me. But before theſe Bills are paid, the Perſon they were drawn upon fails; The Queſtion is, whether this Diſcharge be good or no, and you muſt only ſeek your Regreſs upon* Titius? *&c.*

Anſw. The Diſcharge is good, and you can only ſeek your Regreſs againſt *Titius*; for here is a relinquiſhing the firſt Debtor, and a taking of another in his ſtead, which is a Novation, which doth alwayes extinguiſh the firſt Contract: On this occaſion we may ſpeak ſhortly to five Caſes more of this Nature.

1. *I am your Debtor, and* Ceulus *his Creditor, and I aſſign you upon* Ceulus *to receive your Payment, ordering him to pay you;* Ceulus *being then abſent, you receive my Aſſignation, and deliver me my Bill,* &c. *Am I then diſcharged if* Ceulus *pay not?*

Anſw. No; for here is but a ſimple *ceſſio Nominis*, and that of one that is abſent, and therefore does not accept of the Payment; and this is not an Aſſignation properly, and therefore no Novation, its but an order to receive it in another place, and is therefore no Payment; and therefore I ſtill remain obliged,

obliged, if you have been diligent in demanding Payment, and could procure none.

2. *Suppose* Ceulus *were present, and did then accept of the order to make Payment, or afterwards doth accept, and promise to make Payment, and you consent to take your Payment of him: Am I then discharged if Payment follow not?*

Answ. In the Affirmative, because here is an Assignation properly, which is more than *cessio Nominis*, because of the consent of the Parties, and is indeed a Novation, *qui delegat solbit* in this case, because *Dat nomen debitoris in solutum*; and here the first Debtor hath no more to do than to prove his Debt, unless he also obliged himself for his Debtors sufficiency, which condition doth alter the case, &c.

3. *Suppose I am your Debtor, and order* Ceulus, *my Cashier, to pay, who promiseth to do it, but before he pay, he fails; am I then discharged?*

Answ. The hazard is still the Creditors; for whether the Cashier were my Debtor, or not, its still an Assignation, which discharges me from you, for another having undertaken to pay my Debt, and my Creditor being therewith satisfied; what more can he pretend of me, my Cashier being alwayes supposed

poſed to have ready Caſh of mine in his Hands, when he undertakes to pay my Debt, and the Creditor may blame himſelf, if he did not timouſly enough receive it from my Caſhier: But here is an exception; If it can be proved that the firſt Debtor was conſcious of the deſigned failure of his Debtor or Caſhier, on whom he aſſigned, then the Payment is not good.

4. *Suppoſe I am your Debtor, and I order my Debtor to pay you, and he pays not, but promiſeth to do it; Whether is this my Debtor diſcharged from me?*

Anſw. In the Affirmative, and is only obliged to my Creditor till he pay him; for this is the nature of an Aſſignation, to looſe the Aſſignor from the aſſign and the aſſigned upon, and the Obligation remains only betwixt him on whom is aſſigned, and him to whom he is aſſigned, to which may be added, the Conſiderations in the ſecond immediately foregoing Caſe, with which the common practice agrees; and if this Aſſignation will diſcharge me from my Creditor, much more will it diſcharge my Debtor from me.

5. *Suppoſe I am your Debtor upon a Bill of Exchange, and I cannot pay in preſent Monyes, but give you Security in Goods inſtead of preſent Payment, promiſing to pay within a certain time,*

or

or elſe that you ſhall keep the Goods for Payment, whereof you accept; the time of Payment being come, you not being deſirous to keep thoſe Goods, deſire Payment in Monyes, to which I reply, That I am not obliged to do that, becauſe we agreed, if I paid not within that time, you ſhould keep thoſe Goods for Payment: Which of theſe have the better Law?

Anſw. Some ſay the Debtor hath the better caſe, becauſe here is a clear and expreſt Covent and Contract, and theſe muſt be obſerved, beſides that, *in alternativis Electio eſt debitoris*, as the Law ſays. Others ſay the Creditor hath the better caſe, becauſe this giving of Goods in Payment was only for Security, in caſe the Debtor ſhould not be able to pay, and it was the Creditors Courtiſie to accept hereof; or if the Debtor think he did the Creditor a Courtiſie then, he ought not now to make it turn to his Prejudice and Loſs; Beſides, its well known, that he that hath a Pledge for a Debt may, if he pleaſe, ſell the ſame, and pay himſelf, if the Debtor redeem it not within the appointed time. And all this ſerves to confirm what was before aſſerted, *Caſe* 7.

Caſe 8. *But if I give you* 100 l. Sterling *on Exchange, & you make me Bills of Exchange payable by* Peter; *if* Peter *fail before he pay, his acceptance*

ceptance ſignifies nothing, and I can compel you to pay me, if I duly make Proteſt.

Anſw. In this caſe, this acceptance of the Bills hath not *bim et effectum ſolutionis*; and this is the common ordinary caſe, far different from that 7th *Caſe* foregoing, for here is no Aſſignation or Novation, for this is all this whole one, and the ſame Contract; whereas in the other there ſeems to be a new contract, deſtructive of the former; nay, its not ſo much as *Contractus ceſſionis*, which ſuppoſeth the Acceptant to be the Drawers Debtor alwayes, and if it were, yet here is no mention made of any ſuch Contract; wherefore theſe Bills are only a bare order to the Acceptant to pay, and the Poſſeſſor is in this as a Meſſenger and Servant to demand payment only; wherefore this being conſonant to the common and ordinary practice of Merchants, was never doubted of.

Caſe 9. Tullius *of* London *gave* 100 l. *to* John *and* Francis, *who gave him Bills to receive the value at* Amſterdam, *payable by* Francis *to* Mark; Tullius *having received the Bills, incloſeth them in a Letter of Advice, directed to* Mark, *and throws the Letter into the Poſt-houſe; this Letter of advice and Bills were intercepted by an unknown Perſon, who in* Mark's *Name, having counterfeited his hand, goes and receives the Monyes of* Francis *of* Amſterdam. Tullius

not

not knowing whether the Bills were paid or not, and afterwards adviſed, that Mark *never received any ſuch Bills, he ſent him other Bills, which he procured of* John *and* Francis *for the ſame Sum; which received,* Mark *demands payment of* Francis *of* Amſterdam, *to whom* Francis *Replys, That he had already paid the firſt Bills; whereupon* Tullius *being adviſed thereof, demands reſtitution of* John *and* Francis, *or elſe order them to be paid. This* John *and* Francis *refuſe to do, alledging them to be paid; in this caſe, the doubt is, whether* John *and* Francis *of* London *muſt be alternative condemned, either to make reſtitution, or order the Bills to be paid; and whether they remain Debtor to* Francis, *who paid before upon their order; or whether* Francis *muſt ſeek his regreſs on him, to whom he paid truly; or whether* John *and* Francis *of* London, *and* Francis *of* Amſterdam *are all diſcharged, only* John *and* Francis *muſt transfer to* Tullius, actionem furtevam *againſt him that received the Monyes?*

Anſw. John and *Francis* muſt alternatively be condemned, as above, and do not remain *Francis* of *Amſterdam* his Debtors for what is paid by him, nor can they be moleſted by him, as having paid nothing by their order to their order; ſo that *Francis* of *Amſterdam* muſt ſeek his redreſs on him to whom he paid. The Reaſons are theſe: 1. *John* and *Francis* are *Tullius* his Debtors, till the Bills be

be paid to him, or his order. 2. Though *Francis* of *Amſterdam* will endeavour to defend himſelf, alledging that he paid to one, whom he had juſt ground to believe was the true order of *John* and *Francis*, and that therefore upon his transferring of the action to *Francis*, he muſt be ſaid to have paid well; for he paid to him that preſented the Bills, and did aſſert, that he was that *Mark* nominated in them, and he knowing the Bills to be really the Bills of *John* and *Francis*, he therefore paid *bonâ fide*, and it was not for him to ſuſpect the Bills to have fallen in wrong Hands, the Remitter ſhould have better looked to them, &c. Yet all this, and as much more, will not excuſe him. For this juſt ground of believing him to be the true order of the Drawer, will only excuſe the Debtor and Acceptant, if the Debt be of a certain individual ſpecies or thing, not if the Debt be in *genere ſeu quantitate*; for he that is indebted any certain thing, is diſcharged if the thing be loſt, *non interveniente dolo vel culpâ*, and ſo alſo upon the delivery thereof, *bona fide facta*, but in the paying of a certain Sum of Monyes its otherwiſe. Beſides, *Francis* of *Amſterdam* was ordered to pay to *Mark*, not to the Bearer; and by paying to him, he exceeded the limits of his Commiſſion; nor did he uſe that diligence, which he ſhould, and would have done in his own caſe, ſeeing he

would not but ſuſpect and know that ſuch caſes do often happen, or at leaſt may, and he ſhould not pay but to a certain and known Perſon; wherefore he being faulty, his Negligence can Prejudice none but himſelf.

Object. *But if* John *and* Francis *demand Reſtitution of the Bills, when* Tullius *demands Reſtitution of the Monyes; for* Francis *of* Amſterdam *will not part with them.*

Anſw. This notwithſtanding *John* and *Francis* muſt make Reſtitution, for the Bills are in the Hands of their Factor and Correſpondent, and he muſt ſeek them there.

Caſe 10. *That an Acceptant may accept* ſupra Proteſt, *either in honour of the Drawer, or in honour of ſome Endorſer, &c. and thereby oblige him for whoſe honour he accepts, &c. is before declared. But ſuppoſe* Tullius *is indebted to you* 100 l. Sterling, *and to me as much, and* Tullius *writes to you, That he will remit into my Hands the* 100 l. *for you, and order you to draw the ſame upon me, which* Tullius *alſo doth, and orders me to accept your Bills, whereupon you value upon me; but though I have received the Monyes to anſwer your Bills with, he being indebted to me, I keep the ſame for my own account, and accept your Bills* ſupra Proteſt *in your honour: In this caſe do I oblige you, the Drawer, for the Value paid by me?* &c.

Anſw.

Answ. Yes; this I may lawfully do, though I received the Monyes positively with that order, to answer your Bills for the Value, which none will deny that are acquainted with the Merchantile Stile, especially if I fear my Debtor may fail; yet no wise Merchant would thus disoblige two special and sure Friends. But in this, as in all other cases of this Nature, he that would keep the Drawer obliged for that Draught (or any other Endorser) he must, after the Protest is made and compleated, write upon the Bill, *Accepted* supra Protest *in honour of such and such a one.* And 2*dly*, He must pay *supra Protest* also, or else it will be judged that he receeded from the first Protest, and accepted and paid freely and simply. 3*dly*, At the due time he must redraw the Sum and the Charges on him, for whose account he accepted, if other Provision be not made before that time. 4*thly*, None may accept *supra Protest*, in honour of any, till the Person on whom the Bill is directed, hath absolutely refused both freely and *supra Protest* to accept: And here by the way observe; 5*thly*, That if the Possessor will not accept of the Acceptants acceptance *supra Protest*, that he resolves himself freely to accept thereof, and he also must refuse it, before any third can be admitted. But 6*thly*, If any man publickly declare and proclaim,

That ſuch and ſuch Bills ſhould not be accepted (having ſpecial Commiſſion for that end) then no man may accept, or having accepted, may not pay the ſame, but at his own Peril and Hazard, neither freely nor *ſupra Proteſt.* For *7thly*, If the Drawer be failed, or ſuſpected to be near failing, if any pay or accept, they do it either in their own, or to the Prejudice of the Creditors.

Caſe 11. *You at* London *give to* Vivianus 100 l. *that he may give you Bills payable for the value at* Amſterdam; Vivianus *agrees and gives you open Letters of Advice, which you ſend to* Peter *at* Amſterdam, Peter *watching an opportunity falſifyes the Bills, and for* 100 l. *demands* 2, *having made* 1, 2, *or made the Cyphers into a* 6, *or a* 9. *and ſo demanded* 160, *or* 190 l. *or* 200 l. *for* 100 l. *The Queſtion is, who muſt bear this Loſs,* Bergonzus *that paid the Bill, becauſe he paid not well, or* Vivianus *that did expreſs the Sum clearly enough in fair Characters, or you who choſe ſuch a Knave for your Correſpodent?*

Anſw. Here two Caſes muſt be diſtinguiſhed; *1ſt*, If the Falſification were palpable and evident, and eaſily diſcernable with half an Eye, then the Acceptant and Payer muſt bear the Loſs, becauſe he did not diligently obſerve thoſe Figures when he paid, and his own Negligence can only Prejudice himſelf, not

not another; yea, if there were but any ground of ſuſpicion that the Figures were altered, its ſtill the ſame; but 2*dly*, If the Falſification were ſo neat, that it could not ſo eaſily be diſcerned nor ſuſpected, then the Acceptant pays well, and will be diſcharged both from the Remitter and the Drawer, and the Acceptant may ſeek his re-imburſment from the Drawer, and the Drawer muſt ſeek his from the Remitter, he making no Objection at the Receipt of the open Letters, for the badneſs of the Characters, &c. the Fault is his.

Caſe 12. *As an Objection againſt this; Suppoſe then any ſhould Counterfeit my Hand, and by that means receives Monyes of my Correſpondent, as by my order?*

Anſw. Suppoſe it be never ſo neatly done, that no man could diſcern, no, nor I my ſelf, that it was Counterfeit, yet I am not obliged to allow my Correſpondent ſuch Payments, becauſe I never deſired any ſuch thing of him, nor never made any ſuch Bills, nor writ any ſuch Letters of Advice; wherefore Acceptants muſt be very cautious in paying, and for preventing ſuch Frauds, Merchants ſhould in all their Letters of Advice, reflect upon ſomthing that hath lately paſt between them.

Caſe 13. *If a Remitter in Commiſſion give*

Moneys to a Drawer, who gives him Bills, and afterwards before the Bills are paid or accepted, fails; Whose ſhall the Loſs be, the Remitters, or his Principals?

Anſw. If the Remitter remitted, or was ordered to remit upon his own *del credere*, he ſtanding good for the Remiſes, the caſe is clear that he muſt bear the Loſs; and though he may object, that he remitted, but not upon his own *del credere*, yet it will not excuſe him; for he ſhould not have remitted at all, if not according to expreſs order. But 2*dly*, If he were only ſimply deſired to remit, then the Loſs will be the Principals, unleſs, 3*dly*, The Remitter contracted with one that was ſuſpected and reported to be near failing, then he not acting for his Principal, as if he had acted for himſelf, and he muſt therefore bear the Loſs; and though there were no other Drawer with whom the Remitter could contract, yet he ought not to have put his Principals Effects in hazard; for neither thus muſt an Acceptant pay to one that is near failing, though the Principal hath ordered it, (not knowing thereof) for even the Letter of Attorney to receive for another is *ipſo facto* revoked, without any other further intimation thereof; and thus alſo would it have been if the Remitter had expreſs order from the Principal to contract with that Drawer.

For

For other Caſes of this nature, we refer to what is before hinted, *&c.*

Glaſſema Quartum.

This my firſt Bill, &c.

Caſe 1. WW*Hether will an Acceptant be diſcharged, or may ſafely Pay when there is but one* prima *or* ſecunda *Bill preſented to him?*

Anſw. He may and muſt Pay, though at the day of Payment none but his accepted Bill be offered to him; for the command is, that the firſt or the ſecond Bill ſhould be paid, if neither of them were paid before. 2. They are all (were they never ſo many) but authentick Copies of the firſt, and one paid, the reſt are null and void. 3. The Reaſon that more then one Bill is made, is only for the better ſecurity of the Remitter, and is no diſadvantage to the Drawer, and are partly for proof of the Contract, if any Bill ſhould be loſt or miſcarry, and partly for better obliging the Drawer and Acceptant to pay: Yet all this notwithſtanding, as was before obſerved, he is very unwiſe that will pay upon one Bill, the other being pretended to be loſt, unleſs the Poſſeſſor give Security for indemnifying the Acceptant, or

the Drawer, upon account of the loſt Bill, becauſe they are either of them Obligatory, eſpecially he ſhould ſee to receive his accepted Bill.

Glaſſema Quintum.

To Francis.

Caſe 1. FRancis *hath a Bill remitted to him by his Correſpondent at* London, *payable in* Amſterdam, *where* Francis *lives, which Bill* Thomas *of* London *drew, and charged upon himſelf, deſigning to be at* Amſterdam *before the day of Payment, and accordingly he arrives there, and* Francis *demands acceptance, which* Thomas *refuſes; Whether may* Francis *compell him to accept?* Thomas *alledging, that he had no contract with* Francis, *nor is any way obliged to him, nor is he indeed without acceptance, for acceptance only doth oblige the Acceptant to the Poſſeſſor, and where there is no obligation, there lies no action; though the Bill be made payable to* Francis, *and* Francis *hath the Bill in poſſeſſion, yet he hath only order to demand acceptance, and by virtue of that order he cannot judicially compell* Thomas *to accept; and from the bare naked poſſeſſion of an obligatory Bill, there ariſes no obligation to the Poſſeſſor, unleſs he be the party concerned, &c.*

Anſw.

Anſw. All this notwithſtanding, yet in this caſe he muſt accept, or may by ready execution be compelled thereunto, he himſelf being both Drawer and Acceptant (though a perſon that is ſimply an Acceptant cannot be compelled thereto) becauſe it would be to no purpoſe to return the Bill with proteſt for non-acceptance, he the Drawer himſelf, from whom redreſs muſt be ſought, being there preſent; beſides, this Drawer in his Bill, doth oblige himſelf to pay to *Francis*, and is the principal Debtor, who received the Monyes, &c.

Glaſſema Sextum.

The Value received.

Caſe 1. *WHether this objection of the value not received may be oppoſed againſt an accepted Bill of Exchange, to diſcharge the Acceptant from his acceptance?*

Anſw. Affirmatively; for, 1*ſt*, Though the Bill ſays expreſly, that the value is received, and in that there ſeems to be a renunciation of this exception, yet the cuſtom of Merchants hath introduced this practice, that though the Bills ſay its received, yet its ſeldom paid till two or three dayes after the Bill is made. And, 2*dly*, The Acceptant is

ſuppoſed

ſuppoſed to accept upon this condition; wherefore if he make this objection, then 3*dly*, The Poſſeſſor muſt prove payment, *onus pro Bandi, in actorem transfertur*, negatives cannot be proved. 4*thly*, If the Bill be proteſted, the Drawer is out of danger, not having received the value; for what hath the Remitter to demand, having not paid the value? wherefore the Acceptant need not fear that it will be returned again to be proſecuted againſt him, the Remitter being ſatisfied in his own hands. But if this objection be made, it muſt be done before the Bill be paid, elſe its ineffectual, and muſt have order from the Drawer, not to pay; otherwiſe, if he do pay, the Drawer may thank himſelf for the loſs, if not paid before the time. But to prevent theſe Diſputes, let the Drawer not part with his *ſecunda* Bill, if he ſay [*The value received*] till he hath received the value (and in this caſe, its unwiſely done for an Acceptant to pay upon one Bill, though accepted, being the *ſecunda* may by the Drawer be detained till the value be paid) or elſe let him ſay [*on the value of ſuch a one*] and leave it undetermined whether it be received, or be yet to be received; for elſe, if it be expreſt as before [*The value received*] the Poſſeſſor will object againſt this exception for proof of the payment, the very Letter of the Bill, containing the clear confeſſion of the Drawer.

Drawer. But here we may note, That this exception hath no place where the Drawer and Remitter is one individial Perſon, &c. nor hath it place if the Drawer be failed or dead.

Glaſſema Septimum.

Place to Account.

Caſe 1. *IF theſe words be omitted in the Bill, may the Acceptant ſimply accept, or* ſupra proteſt?

Anſw. To proteſt in this caſe, is altogether ſuperfluous and needleſs; for its for the Drawers account if he doth accept, unleſs the Letter of advice ſay, That its for anothers account.

Glaſſema Octavum.

To Titus, *&c. Merchant in* London.

Caſe 1. *BIlls of Exchange being directed by the Drawer, can the Remitter compell the Drawer to alter the Bills, and give him Bills upon another?*

Anſw. Not by compulſion, but if the Drawer conſent, this may be done, elſe after an

an Exchange-contract is made by the Broger, there is no repentance to either party upon any pretence: The Remitter contracts with the Drawer, and if he like not the Acceptant, the Drawer is ſtill the ſame, and obliged to him till payment be made, much leſs may the Remitter alter the direction without the Drawers knowledge.

I think I need not tell the Reader, that Bills unſubſcribed are like Bonds without Seals, and are not obligatory at all, and can ſcarce think that any Acceptant would accept ſuch a Bill; wherefore that I may not ſwell the Book with unneceſſary caſes which ſeldom happen, I ſhall ſummarily hint at ſome things that remain, and ſo conclude, hoping that the Reaſons contained in this Book, and theſe Caſes reſolved in it, will direct the underſtanding and judicious in any caſe whatever that may happen to them, whether *Drawers*, *Remitters*, *Acceptants* or *Poſſeſſors*, or any other way concerned in Bills of Exchange.

CHAP.

CHAP. XLIV.

Of the Execution of Exchanges.

Rule I.

PRoceſſes and Suits of Law, concerning Bills of Exchange, ſhould be ſummary, ſhort and quick; *Preſent Execution*, that is, attachment of Goods and arreſt of Perſon, does alwayes attend a proteſted Bill of Exchange. But,

II. If Bills be returned empty without proteſt, they cannot be priviledged with this extraordinary procedure, but are only looked upon as ordinary Bills or Bonds.

III. Though a third perſon be concerned in a Bill that is proteſted, and both the Drawer and Acceptant are failed, yet he is not lyable to anſwer the Creditors, nor can be moleſted upon that account; for though he was obliged to the Drawer and Acceptant, what doth this obligation concern their Creditors, he is no way obliged to them?

IV. Not only the Remitter himſelf, but his Heirs, Executors, Adminiſtrators and Aſſigns,

Aſſigns, or any other by his order may proſecute the Law upon a Bill of Exchange that was proteſted, and attach and arreſt as if he himſelf was there.

V. If the Creditor, upon the return of the Bill with proteſt, do not preſently procure ſatisfaction or ſecurity, nor demand of the Magiſtrate in ſome Weeks the priviledge of a Bill of Exchange, *viz.* ready Execution, he loſes the priviledge of a Bill of Exchange.

VI. In the caſes of Exchange, there ſhould lie no appeal from one Court to another, from an Inferior to a Superior, unleſs the Creditor were put in poſſeſſion of his demands firſt, or at leaſt, that it was ſecured to him.

VII. Nor can the Judges be guilty of any Præcipitancy in this caſe; for a Bill of Exchange is a Bond and Judgment, as good as an Hypotheca, and being already *res judicata*, the Execution cannot be ſuſpended.

VIII. For the recognizance of Bills drawn by another in another place, its not neceſſary to fetch Witneſſes from other places that can Swear they ſaw him write them, its enough that by comparing of the Hand-writings it appear that the Bills are of the Drawers writing.

IX.

IX. Bills of Exchange cannot, muſt not by any Authority whatever be arreſted or detained, becauſe they are introduced and confirmed by the Law of Nations, *i. e.* Forreign Bills.

X. In caſes of Exchange, the cuſtom of places, and their municipal Laws concerning the circumſtances thereof muſt be obſerved, (as concerning the time of payment, of proteſting, &c.) more than the common Law.

XI. If any ſubſcribe a *tertia* Bill of Exchange, as ſecurity for the Drawer, he is as lyable to make ſatisfaction, if the Drawer fail, as if he were the Drawer himſelf, nor need the Remitter firſt excuſe the Drawer.

XII. An execution of payment, or reſconter (if a Liquidate Debt, otherwiſe not) may be oppoſed to hinder the preſent execution upon a Bill of Exchange, as alſo an exception of Preſcription, *deli mali*, or that the Bill is not of the Drawers writing, nor ſubſcribed by him, but a counterfeit.

XIII. If there be one or more Drawers, if all have ſubſcribed all the Bills, or but one of them, they are all lyable to anſwer in caſe of Proteſt.

XIV.

XIV. If any one concerned in a Bill of Exchange, do not do their Duty, and what the Courtiſie and Cuſtom of Merchants obligeth them to, they themſelves are lyable to make good all the Loſs and Damage that may happen thereby.

XV. By *parata Executie*, is meant Attachments upon their Goods, or Arreſts upon their Perſons, or both; for here the Rule and Maxim of Law hath no place, *Qui non habit in ære luat in corpore*; i. e. That the doing of one ſhould exclude the other, *&c.*

XVI. Not only common Reaſon, and the general Cuſtoms of Exchanges allow this *paratam Executionem*, in caſes of Bills of Exchange, but alſo the Municipal Laws of places of Exchange.

XVII. This Law and Cuſtom is of virtue and power againſt all that are named in a Bill of Exchange, ſo far as they are negligent of their duty, or any way faulty: But though a third or fourth be concerned in the Bill, if their Names be not in the Bills, this Law cannot reach them.

XVIII. If any by this ready Execution, do ſuffer wrongfully, they have their Regreſs againſt the actor, in an ordinary way only, and may recover Damages.

CHAP.

CHAP. XLV.

Of the Par *of Exchanges.*

TO conclude this Work, it will not be ſuperfluous to give a tranſient view of the Par of Exchanges; and that I may be compendious in this, I ſhall omit the unneceſſary Diſcourſes of the variety of *Pars*, as alſo directions for the calculation thereof, referring thoſe that are deſirous of information herein to the *Map of Commerce*, in *Engliſh*, and to the Book entituled, *Underricht der Wiſſel-handlung*, in *Hollands* and *High-Dutch*, and I ſhall only here obſerve what is the reputed *Par*, according to the Intrinſick value, or as is generally received among Merchants. But before this be done, it will be neceſſary to premiſe in what denominations every Country and City do keep their accounts and make their Exchange, which ſhall be done in this following method.

LONDON.

All Forreign Exchanges made for *England*, *Scotland* and *Ireland* are made at *London*, and accounts are kept there in *Pounds*, *Shillings*

and *Pence*, 20 *s.* makes a Pound, and 12 *d.* a Shilling, as is very will known, and ſo generally, which I would have noted once for all, where any Country or City hereafter ſpecified, is ſaid to keep their Accounts in *Pounds*, *Shillings* and *Pence*, or in *Livers*, *Souls*, and *Deniers* (as they call them) that they are always divided or multiplied by 12 & 20, ſo that 20 *Shillings* or *Soulz* make a *Liver* or *Pound*, and 12 *Pence* or *Deniers* make their *Soulz* or *Shilling*. *NB.*

London *then Exchanges with* Italy, *as with*

Venice } Where accounts are kept in *Ducats* and *Groſſes*; 24 *Groſſes* make a *Ducat*, the *Ducat* is 6$\frac{1}{3}$ *Livers* or *Pounds*, under which denominations ſome Merchants in *Venice* do alſo keep their accounts; but the courſe of Exchange is always made upon the *Ducat* and *Groſſes*: The *Ducat* is twofold, either *de ovo* or *banco*, which is *par* with 52 *d. Sterling*, or *de currante*, which is *par* with 40 *d. Sterling*, in which broken Numbers *London* always Exchanges with *Italy*, giving them the *Pence* for their *Ducats* or *Crowns*, &c. The courſe of Exchange for *Venice* from *London* is generally 50$\frac{1}{2}$ *d* to 51 *d. Sterling in circa* for their *Ducat* in *banco*.

The

Bergoma } *The ſame with* Venice, *whither* England *hath little Exchanges directly.*
Florence }

Where accounts are kept in *Pounds*, *Shillings* and *Pence de ovo*, but they Exchange upon the *Crown de ovo*, which is valued at 7$\frac{1}{2}$ of their *Pound*, and their *Crown currant* at *l.* 7. and their *Pound* or *Liver* may be *par* with 9 *d. Sterling*; their *Crown currant par* with 63 *d.* their *Crown banco* or *de ovo*, with 67$\frac{1}{2}$ *d. Sterling*. There is ſeldom any direct courſe of Exchange from *London* thither, but to

Leghorne } There is a courſe of Exchange at 53 *d. Sterling in circa* for their *Crown de ovo*, being of the ſame value with that of *Florence*.

Luica } The ſame with *Florence* and *Leghorne*.

Rome, *Placentia* *Bollonia* } Keeps accounts in *Crowns*, *Shillings* and *Pence de ovo*; one *Crown* makes 20 *Shillings*, 12 *Pence* makes 1 *Shilling*.

The *Crown* { *de Eſtampi* of *Rome* / *de Marchi* of *Placentia* } are of one value 7 *s.* 6 *d.* or 90 *d. Sterling*.

The *Crown* { *de Eſtampi* is worth 12 / *currant* worth 10 } *Juliers*.

The *Juliers* is 10 *Bayocchijs*.

England hath no direct courſe of Exchange

change to any of these places, or very seldom.

Naples, *Barry*, *Lechie* } Keeps accounts in *Ducats*, *Tary* and *Grani*, and exchanges thereupon, only they make a difference betwixt the *Currant* and *Bank Ducat*, the one being called *Moneta de ovo*, the other *Moneta curranto*.

One *Ducat* is 5 *Tary*, the *par* with *London* is 60 *d.* or 5 *s. Sterling* for one *Ducat*.

One *Tary* is 20 *Grani*; the *Tary* is 1 *s. Sterling* in value.

One *Crown de ovo* is 6 *Tary*, or 6 *s.* 6 *d.* or 78 *d. Sterling*.

One *Crown currant* is 5 *Tary*, or 5 *s.* 6 *d.* or 66 *d. Sterling*.

One *Ducat Exchange-Monyes* is 6 *Tary* or 6 *s.* or 72 *d. Sterling*.

One *Ducat currant* is, as before, 5 *Tary*, *&c.*

England hath no direct course of Exchanges to these place, or very seldom at least.

Genua } Keeps accounts in *Pounds*, *Shillings* and *Pence de ovo*, some in *Pounds*, *Shillings* and *Pence currant*, but the Exchange is made upon the *Crowns* or *Shillings de ovo*; the *currant Liver* or *Pound* is valued at 18 *d. Ster.* the *Crown de ovo* is not always at one constant price, but rises and falls, it should contain 68 *s.*

or

or 3 *l.* 8 *s.* but it riſes ſometimes to 4 *l.* 10 *s.* & to 5 *l.* of their Monyes; neither is there here any conſtant courſe of exchange from *England*

Milan } Keeps accounts in *Pounds*, *Shillings* and *Pence*, but exchanges upon the *Crown de ovo*, which is ſometimes and for ſome places, ſaid to contain 100 *s.* or 5 *l.* of their Monyes; and other times, and for other places *Qtts* 117 *s.* or 5 *l.* 17 *s.* of their Monyes: The *Currant Monyes* is here called, *Imperial*, the *Bank*, *de Ovo*; the *Crown* of 5 *l.* or *Livers*, is *par* with 60 *d.* or 5 *s. Sterl.* the *Crown* of 5 *l.* 17 *s.* with 70 *d.* or 5 *s.* 10 *d.* *in circa*; nor is there any conſtant courſe of Exchange from *England* to this City, *&c.*

Palermo } Keep accounts in *Ounces*, *Tary* and *Grani*, and exchange in *Ducats*, *Carlini*, *Crowns* and *Florines* or *Guilders*.

One *Ounce Qtts* 30 *Tary*; the *par* of an *Ounce* with *London* is 12 *s.* 6 *d.*

One *Tary Qtts* 20 *Grani*; 1 *Tay* is 5 *d.* *Sterling.*

One *Tary Qtts* 2 *Carlini*; 1 *Carlini* 2½ *d.*

One *Carlini Qtts* 10 *Grani*; 1 *Grani* is 1 *qr. Sterling.*

One *Grani Qtts* 6 *Piccollji.*

One *Ducat Qtts* 13 *Tary* or 26 *Carlini*, *par* with *England* 65 *d.* or 5 *s.* 5 *d.*

One *Crown curuant* 12 *Tary*, or 24 *Carlini*, valued at 60 *d.* or 5 *s. Sterling.*

One *Florine* 6 *Tary* or 12 *Carlini*, valued at 30 *d.* or 2 *s.* 6 *d. Sterling.*

England hath very little Exchange directly to theſe places.

London Exchanges with *Spian*, as with

Valentia, *Barſelona*, *Saragoza* } Where accounts are kept in *Pounds*, *Shillings* and *Pence*, but they Exchange upon the *Ducat*,

which in { *Valentia*, *Saragoza*, *Barſelona* } is valued at { 21 *s.*, 22 *s.*, 24 *s.* } of their Monyes.

The currant Monyes of theſe places are *Ryals*, whereof ten are reckoned to a *Pound* or *Liver*, ſo that

The *Ducat* of { *Valentia*, *Saragoza*, *Barſelona* } is { 10½, 11, 12 } *Ryals.*

The *Royal* is 2 *s.* in their Monyes.

The *Par* with *London* of *Valentia*'s *Ducat* is 63 *d.* or 5 *s.* 3 *d. Sterling.*

The *Par* with *London* of *Saragoza*'s *Ducat* is 66 *d.* or 5 *s.* 6 *d. Sterling.*

The *Par* with *London* of *Barſelona*'s *Ducat* is 72 *d.* or 6 *s. Sterling.*

They have alſo a *Crown* at *Barſelona* valued at 22 *s.* of their Moneys. There is no conſtant

ſtant direct courſe of Exchange to theſe places from *England*.

Sevil, *Cadiz*, *Alcala*, *Madrid*, and all *Caſtilia*, } And in all the reſt of *Spain*, accounts are kept in *Marvedies*; but for Exchange they have an imaginary *Ducat*, which is always accounted for 375 *Marvedies*, or one *Marvedie* more than 11 *Ryals*, 34 *Marvedies* making 1 *Ryal*; their *Crown* of Gold is valued at 400 *Marvedies*; they have alſo an imaginary Coyn, which they call, a *Caſtiliano*, with which all their Exchanges for *Caſtilia* are only made, valued at 485 *Marvedeis*.

The *Par* of the *Ducat* of 375 *Marvedies*, with *London*, is 5 *s.* 6¼ *d. Sterling*, or 66¼ *d. Sterling*. The courſe is uſually 49 *d.* 50 *d.* to 51 *d. Sterling in circa.*

London Exchanges with *Portugal*, as,

Liſbone } The Exchange from *London* to *Liſbone* is made upon the *Mill Ree*, 1000 *Rees* making 1 *Mill Ree*, which is about 6 *s.* 6 *d.* to 7 *s.* according as the Exchange runs.

NB, When I remit Moneys from *London* to *France*, *Spain* and *Portugal*, &c. where it is at ſo much *per piece*, as 54½ *d. per Crown*, 49 *d. per piece* ⅛ 6 *s.* 8 *d. per Mill Ree*, *&c.* the lower the Exchange is, the better it is

for me, becauſe if I deliver 100 *l.* I can have more Crowns at 54 *d.* than at 55 *d.* and ſo when I draw I muſt obſerve the contrary, that the higher it is, the leſs Exchange I ſhall pay. But when I remit for *Holland*, *Hambrough*, *Ireland*, &c. where Exchange runs at ſo much *per Pound Sterling*, or ſo much *per Centum*, the higher it is, the more is my gain; for I had better remit for *Hambrough* at 35 *s.* 3 *d.* *Flemiſh per Pound Sterling*, than at 35 *s.* And ſo for *Ireland*, where Exchange runs at ſo much *per* 100 *l.* ſometimes when I pay 100 *l.* in *London*, I ſhall have a Bill payable in *Dublin* for 110 *l.* and other times but 105 *l.* according as Exchange runs.

London Exchanges with *France*, as *Paris*, *Roan*, *Lyons*, *Beſanzon*, *Marſeles*, *&c.* *Baurdeaux* In all which places accounts are kept in *Pounds*, *Shillings* and *Pence Tournois*, but their Exchange is made upon the *Crown de or*, or *Crown of the Sun* (as ſome call it) which is valued at 3 *l.* (or *Livers*) *Tournois*, or 60 *s.* (or *Soulz*) theſe *Crowns* are alſo divided into 20 *s. de or*, the *Shilling* into 12 *d. de or.*

Theſe *Crowns de or*, or *Crowns of the Sun*, at their firſt Coynage did bear the true worth and value of 6 *s. Sterling*, or 72 *d. Sterling*, but the preſent *Lewiſes* are not worth above 4 *s.* 6 *d.* or 54 *d. Sterling.*

The

The courſe of Exchange from *London* to any of theſe places, is about 54 *d.* a 55 *d. Sterling* for a *French Crown* of 60 *s.* (or *Soulz*) which is reckoned to be 30. a 32 *per Centum* advance, when Moneys is delivered in *England.*

London Exchanges with the *Netherlands*, as

Antwerp for *Braband*
Ryſſels, *Lille* } for *Flanders*
Amſterdam for *Holland*
Rotterdam
Dort, *Middleburge* } for *Zealand*
&c.
Colne for *Germany.*

In all theſe places accounts are kept in *Pounds, Shillings & Pence Flem.* or in *Guilders, Stivers*, and *Groten Flemiſh*, as the Merchants fancy, but the Exchange is made upon the *Pound Flemiſh* for the moſt part. For the better underſtanding of the Exchanges of this place, it will be neceſſary to hint ſomething of their Coyns and Value.

1 *Pound Flemiſh* is 20 *s. Flemiſh.*

1 *Shilling Flemiſh* is 12 *d. Flemiſh.*

1 *Guilder* is 20 *Stivers.*

1 *Specie Dollar* is 50 *Stivers*, or 2½ *Guilders*, or 100 *Groten* (1 *Stiver* being 2 *Grotes*) or 8 *s. Flemiſh.*

1 *Ducatoon* is 63 *Stivers.*

1 *Lyon Dollal* 40 *Stivers.*

1 *Common*

1 *Common Dollar* 30 *Stivers.*
1 *Zealand Dollar* 30 *Stivers.*
1 *Campen Dollar* 26 *Stivers.*
1 *Embden Dollar* 23 *Stivers.*

The *Par* betwixt *London* and theſe places is reckoned generally to be 33 *s.* 4 *d.* for the *Pound Sterling.* But the courſe varies from 36 *s.* 3 *d. Flemiſh,* to 37 *s.* and upwards.

London Exchanges with *Germany,* as *Hambrough* } Keep their accounts in *Pounds,* *Lubeck* } *Shillings* and *Pence Flemiſh,* or in *Marks, Shillings* and *Pence Lubs,* or in *Rixdollars, Shillings* and *Pence,* as the Merchants pleaſe; they exchange upon the *Pound Flemiſh,* and upon the *Specie Dollar,* or upon the *Exchange Dollar.* For better underſtanding hereof, note, that

1 *Rixdollar* is 3 *Marks Lubs,* or 48 *s. Lubs,* or 8 *s. Flemiſh.*

1 *Mark Lubs* is 16 *s. Lubs,* 1 *s. Lubs* is 12 *d.*

1 *Exchange Dollar* (whereon Exchanges are made with *Amſterdam* and *Frankford*) is 32 *s. Lubs,* and is *par* with 32 *Stivers* at *Amſterdam,* or *Marks Lubs.*

The *Par* betwixt *London* and theſe places is reckoned to be 32 *s. Flemiſh* for 1 *l. Sterling*; The courſe is 35 *s.* 6 *d. in circa.*

Frankford,

Franckford, Nurenburge, Ausburge, Vienna, Leipzig, Strasburge, Magdeburge, Berline, &c.

London hath very ſeldom any Exchanges directly to any other places in *Germany*; but if there be any occaſion to remit Monyes to, or draw Monyes from any other Cities of *Germany* (as *Frankford on the main*, *Nurenburge*, *Augſburge*, *Vienna*, *Leipzig*, *Straſburge*, *Bermen*, *Magdeburge*, *Berlin*, or any ſuch like places) they do it either *via Amſterdam*, *Antwerp* or *Hambrough*; wherefore it will not be unneſſary to obſerve how the *Par* of theſe places bears one with another.

Hambrough exchanges with *Frankford*, *Leipzig*, *Augſburge*, *Nurenburge*, and *Breſlaw* in *Sileſia*, as alſo with *Stetine*, *Stralſund*, and *Wiſmar* in *Pomerane*, *&c.* upon the 100 *Speice* or *Currant Dollars* at ſo much *per Centum*; ſo alſo with *Berline*, *Magdeburge*, *Vienna*, *&c.* and all the places of *Germany*.

Amſterdam exchanges with *Antwerp*, 48 *Sitvers* for 96 *d.* which in both places makes a *Rixdollar*.

Amſterdam exchanges with *Paris*, 100 *d. Flemiſh* for the *Crown* of 60 *Soulz*, or for the *Lewis*.

Amſterdam exchanges with *Venice*, 100 *d. Flemiſh* for the *Ducat de ovo*.

Amſterdam exchanges with *Frankford* 87¼ *d. Flemiſh* for the *Guilder*, a 65 *Kreutzers*.

Amſterdam

Amſterdam exchanges with *Nurenburge* 72¼ *d. Flemiſh* for the *Guilder*, a 65 *Kreutzers*.

Amſterdam exchanges with *Leipzig* and *Breſlaw*, and other places in *Germany*, 50 *Stivers* for a *Specie Dollar*; And theſe are the *Pars* of *Amſterdam*.

Amſterdam exchanges with *Colne*, *Ryſſel*, *Rotterdam*, *Middleburge*, *Dort*, and ſuch places they exchange upon the Hundred, at ſo much *per Cent.* as the time of payment is ſhort or long.

Amſterdam exchanges with *Hambrough* upon the *Exchange Dollar* of 32 *Stivers* at *Amſterdam*, and 32 *s. Lubs* at *Hambrough*, which is the *Par* at both places.

London exchanges with *Poland* and *Pruſſia via Amſterdam* or *Hambrough*, as with

Dantzick, *Konigsbrough* } Where accounts are kept in *Guilders*, *Groſh* and *Pence Poliſh*; 1 *Florine* or *Guilder* is 30 *Groſh*, 1 *Groſh* is 18 *d. Poliſh*; 3 *Guilders*, or 90 *Gs.* make a *Rix-currant-Dollar*; *Specie* and *Croſs Dollars* give at preſent 15 to 17 *Groſh aggio*: Theſe places draw upon *Hambrough* upon the *Specie Rixdollar*, or ſo many *Dollars banco*; the courſe uſually about 102 to 105 *Gs. Poliſh* for 1 *Dollar* in *banco*; and being the *Rixdollar* in currant Moneys at *Dantzick* and *Konigſbrough* is valued at 4 *s.* 6 *d. Sterling*, therefore the Merchants uſually reckon, that what

what they get in exchange above 90 *Groſh Poliſh* for a *Bank Dollar* at *Hambrough*, is ſo much profit and advance by the exchange.

When *Dantzick* values upon *Amſterdam*, Merchants reckon, whatever they advance above 216½ *Gs. Poliſh* for the *Pound Flemiſh* in *banco*, is ſo much profit to the Drawer; for 216½ *Gs. Poliſh* is reckoned to be *par* with 1 *l. Flemiſh* in *currant Moneys*. The courſe betwixt *Dantzick* and *Amſterdam* at preſent is 254 *Gs. in circa*. But (*NB.*) as Corn advances in price, the Exchange falls, ſo that I have known it ſometimes under the *Par*.

The ſame may be ſaid of *Konigsbrough*, with this exception, that it values always on *Amſterdam* in currant Moneys; the courſe at preſent may be about 242 *Gs.* for a *Pound Flemiſh*.

Dantzick and *Konigſbrough* exchange one with another at ſo much in the hundred; the courſe at preſent is *par*.

Dantzick exchanges with *Breſlaw* in *Sileſia*, at ſo much *per Cent*. there being very little difference in the value of the Moneys.

London Exchanges with *Sweeden*, as *Stockholme* } Which exchanges for all *Sweeden*, properly ſo called, *via Hambrough* or *Amſterdam*.

Sweeden keeps accounts in *Copper Dollars*, whereof five are reckoned to be worth (and

par

par with) a *currant Rixdollar*, or 3 *Guilders Polliſh*, or 4*s.* 6 *d. Sterling.*

They have a *Stiver Dollar*, which is called, the *Sweeds Rixdollar*, and is in value but half a *currant Rixdollar* of *Germany* or *Poland*, or 2 *s.* 3 *d. Sterling*; in this ſpecie the cuſtoms of all exported Goods muſt be paid, and its divided into 32 *Ore*, as they call them.

The *Dollar* in which the cuſtoms of all imported Goods muſt be paid, is the *Sweedens Copper-Plate Dollars*, which are in value twice as much as the other, *viz.* 90 *Gs.* or 3 *Guilders Poliſh*, or 4 *s.* 6 *d. Sterling*, in their *Copper-Plate Dollar* are reckoned 48 *Ore.*

They have alſo *Silver Mark* or *Guilder piece*, that are of the ſame value with the *Marks Lubs* and *Poliſh Guilders*, *viz.* 18 *d. Sterling*, being the one third of a *currant Rixdollar.*

But they exchange with *Hambrough* (whereon the greateſt part of their exchange is made) upon a certain *Mark*, whereof 20 are reckoned to be *par* with the ſpecie Dollar in Bank; and the courſe is ſometimes 24 a 25, and upwards, *per Specie Dollar*; ſometimes exchange may be made directly upon *London*, and then though they reckon 20 *Copper-Dollars* to be *par* with 20 *s.* or 1 *l. Sterling*, yet the courſe is frequently at 28 a 30 *Copper Dollars per* 1 *l. Sterling*; but this

this is regulated according to the courſe of Trade.

London exchanges with *Liefland*, as *Riga*, *Revel*, *Narva*, } But not direct, only *via Hambrough* and *Amſterdam*, as before was hinted of *Sweeden* and *Pruſſia* (and to theſe we may add *Narva* in *Ingria*, or *Ingermanland* in *Ruſſia*, which is alſo under the dominion of the *Sweeds*) at theſe places accounts are kept in *ſpecie Dollars* and *Groſhes*, reckoning 90 *Gs.* for a *ſpecie Dollar*; *Riga* exchanges with *Hambrough* and *Amſterdam* upon the 100 *Dollars*, at ſo much *per cent.* ſometimes *par*, ſometimes 5 or 6 *per cent.* loſs; *Revel* and *Narva* may probably uſe the ſame method in Exchanges, uſing Coyns of the ſame value; but if they are not the ſame with *Riga*, they will doubtleſs be the ſame with *Stockholme*, whither be referred.

Further, for concluſion obſerve, that

1 *Specie* or *Rixdollar* is valued at 4 *s.* 6 *d* *Sterling.*

8 *s. Flemiſh*, or 50 *Stivers.*

3 *Mark Lub*, at *Lubeck* and *Hambrough.*

3 *Guilders Poliſh.*

3 *Livers French.*

6 *l.* 10 *s. Venice.*

24 good *Groſh* at *Leipzick.*

6 *Mark*

6 *Mark*, or 96 *s. Daniſh*; 1 *Sleight Dollar* is 4 *Mark Daniſh.*

6 *Mark Pomeriſh*, as *Stralſund.*

20 *Mark Sweediſh.*

8 *Spaniſh Ryals*, or *Marvedies* 272.

30 *s.* or *Regſers Groſh* in *Breſlaw* in *Sileſia.*

36 *Marien Groſh*, *Luneburgs* and *Brauns Wickes.*

2 *Marks Bremers*, or 6 *Kopfſtuck.*

4 *Tary* at *Naples.*

30 *s.* or *Keyſers Groſh* } at *Auſburge* and
90 *Kreutzers* } *Nuemburge.*

18 *s.* or *Batzen* in *Frankenland* and *Switzerland.*

90 *Kreutzers* at *Straſburge* and *Frankford.*

30 *Keyſers Groſhes* at *Vienna*, &c.

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